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U.S. Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

U. S. DEPT. OF AGRICULTURE

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

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FOODS

CURRENT SERIAL RECORD

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were adulterated or misbranded within the meaning of the Act when introduced into and while in interstate commerce, when shipped to a holder of a guaranty, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default, or consent, and including the trial and appeal of motions for summary judgment in one case and the forfeiture of a bond in another case; (2) criminal proceedings which were terminated upon pleas of guilty and nolo contendere and, in one case, upon a verdict of guilty after trial by jury; and (3) injunction proceedings in which decrees of preliminary or permanent injunction were entered by consent. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal and injunction proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., *January 10, 1964.*

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*SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN VIOLATIONS
REPORTED IN F.N.J. NOS. 28901-29000*

Adulteration, Section 402(a) (1), the article contained a deleterious substance which might render it injurious to health; Section 402(a) (2) (B), the article was a raw agricultural commodity and contained a pesticide chemical which was unsafe within the meaning of Section 408(a); Section 402(a) (2) (C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a) (4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b) (1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b) (2), a substance had been substituted in whole or in part for the article; Section 402(d), the article was confectionery, and contained nonnutritive substances; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because no tolerance or exemption from the requirement of a tolerance for such pesticide chemical in or on the raw agricultural commodity had been prescribed by the Secretary of Health, Education, and Welfare; or because the quantity of the pesticide chemical in or on the raw agricultural commodity was not within the limits of a tolerance prescribed by the Secretary of Health, Education, and Welfare; and Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use.

Misbranding, Section 403(a), the labeling of the article was false and misleading; Section 403(b), the article was offered for sale under the name of another food; Section 403(e) (2), the article was in package form, and it failed to bear a label containing an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g), the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed by regulations and (1) it failed to conform to such definition and standard, and (2) its label failed to bear, as required by regulations, the common names of certain optional ingredients present in such food; Section 403(h), the article purported to be or was represented as (1) a food for which a standard of quality had been prescribed by regulations, and its quality fell below such standard, or (2) a food for which a standard of fill of container had been prescribed by regulations and it fell below the applicable standard of fill of container; Section 403(i) (2), the article was not subject to the provisions of Section 403(g) and the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; Section 403(j), the article purported to be and was represented for special dietary uses, and its label failed to bear such information concerning its vitamin, mineral, and other dietary properties as the

Secretary had determined to be, and by regulation prescribed as, necessary in order fully to inform purchasers as to its value for such uses; and 403(k), the article contained an artificial flavoring, and failed to bear labeling stating that fact.

CEREALS AND CEREAL PRODUCTS

FLOUR

28901. Flour. (F.D.C. No. 45827. S. No. 48-323 R.)

QUANTITY: 143 100-lb. bags, at Grand Rapids, Mich., in possession of Watson-Higgins Milling Co.

SHIPPED: 4-4-61 and 4-20-61, from Minneapolis, Minn., and Chicago, Ill.

LIBELED: 6-12-61, W. Dist. Mich.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 6-22-61. Consent—claimed by Watson-Higgins Milling Co. Segregated; 47 bags denatured.

28902. Flour. (F.D.C. No. 48685. S. Nos. 28-069/70 V, 28-080 V, 28-101 V.)

QUANTITY: 97 50-lb. bags of flour, at Omaha, Nebr., in possession of United A-G Stores Cooperative, Inc.

SHIPPED: 9-25-62 and 12-6-62, from Kansas City, Mo.

LIBELED: 1-28-63, Dist. Nebr.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-4-63. Consent—destruction.

28903. Flour. (F.D.C. No. 48461. S. No. 20-328 V.)

QUANTITY: 60 100-lb. bags, at El Paso, Tex., in possession of Economy Cash & Carry, Inc.

SHIPPED: 7-3-62, from Denver, Colo.

LIBELED: 11-23-62, W. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 3-8-63. Default—destruction.

28904. Flour. (F.D.C. No. 48609. S. No. 39-262 V.)

QUANTITY: 22 100-lb. bags, at Paterson, N.J., in possession of A. Giger & Co.

SHIPPED: 11-20-62, from Buffalo, N.Y.

LIBELED: 1-21-63, Dist. N.J.

CHARGE: 402(a)(3)—contained rodent excreta pellets; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-3-63. Default—destruction.

28905. Flour. (F.D.C. No. 48644. S. Nos. 59-502/3 V.)

QUANTITY: 157 25-lb. bags of self-rising flour, and 295 25-lb. bags of plain flour, at Seneca, S.C., in possession of Seneca Grocery Co.

SHIPPED: 10-23-62, from Claflin, Kans.

LIBELED: 2-25-63, W. Dist. S.C.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-11-63. Default—delivered to a charitable institution for use as animal feed.

28906. Flour and cereal binder. (F.D.C. No. 47875. S. Nos. 57-407/8 R, 2-453 T.)

INFORMATION FILED: 9-14-62, N. Dist. Ga., against Nelson Brokerage Co., a corporation, Atlanta, Ga.

ALLEGED VIOLATIONS: Between 11-27-60 and 11-2-61, while quantities of flour and cereal binder were being held for sale after shipment in interstate commerce, the defendant caused the articles to be held in a building that was accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained rodent urine and hairs; and 402(a)(4)—held under insanitary conditions.

PLEA: Not guilty.

DISPOSITION: On 3-6-63, the case came on for trial before court and jury. On 3-7-63, the jury returned a verdict of guilty. On 3-9-63, corporation was fined \$100 and placed on probation.

28907. Flour and potatoes. (F.D.C. No. 47892. S. Nos. 37-632/4 T, 37-636/7 T, 38-413 T.)

INFORMATION FILED: 11-14-62, E. Dist. La., against Interstate Wholesale Grocers, Inc., trading under the names of Dupont Wholesale Co., Houma, La., and Percy-Lobdell Co., Thibodaux, La., and against Joseph B. Dupont, president of the corporation and Thibodaux, La., warehouse manager, and Donald E. Dupont, vice president of the corporation and Houma, La., warehouse manager.

ALLEGED VIOLATIONS: Between 9-18-61 and 2-16-62, while quantities of flour and potatoes were being held for sale after shipment in interstate commerce, the defendants caused the article to be held in buildings at Houma and Thibodaux, La., that were accessible to rodents and insects and to be exposed to contamination by rodents and insects, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained insect larvae, excreta, and webbing, and rodent hairs, pellets and urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty by the corporation to all counts; nolo contendere by Donald E. Dupont to 4 counts and by Joseph B. Dupont to 2 counts.

DISPOSITION: 6-19-63. Corporation—\$1,500 fine; Donald E. Dupont—\$1,000 fine; and Joseph B. Dupont—\$500 fine.

28908. Flour, cornmeal, dried pinto beans, and unpopped popcorn. (F.D.C. No. 48846. S. Nos. 73-484/6 V, 73-489 V.)

QUANTITY: 1,748 25-lb. bags of flour, 360 25-lb. bags of cornmeal, 80 100-lb. bags of dried pinto beans, and 26 cases, each containing 6 4-lb. bags of unpopped popcorn, at Dallas, Tex., in possession of Affiliated Food Stores.

SHIPPED: Between 9-25-62 and 3-21-63, from Kansas City, Mo., Winfield, Kans., Lucerne and Greeley, Colo., and Cedar Rapids, Iowa.

LIBELED: 5-3-63, N. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent excreta; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 6-26-63. Default—denatured and sold by the Government for industrial use.

MACARONI AND NOODLE PRODUCTS

28909. Egg noodles, macaroni, and spaghetti. (F.D.C. No. 45549. S. Nos. 32-313/16 R, 32-318 R.)

INFORMATION FILED: 8-14-61, E. Dist. N.Y., against DeMartini Macaroni Co., Inc., Brooklyn, N.Y.

SHIPPED: 9-16-60, from Brooklyn, N.Y., to Long Branch and Neptune, N.J.

LABEL IN PART: "Egg Noodle Product Enriched Quality Product Net Weight One Pound The DeMartini Macaroni Co., Inc. Brooklyn, New York," "Macaroni Product Net Weight One Pound The DeMartini Macaroni Co. Inc. Brooklyn, N.Y.," "A Quality Macaroni Product Made from Semolina Martini Brand 1 Lb. Net The DeMartini Macaroni Co., Inc. Brooklyn, N.Y.," "Lido Brand Mfgd. By DeMartini Mac. Bklyn., N.Y. Spaghetti 20 Lbs. Net When Packed Semolina Macaroni," and "ELBOWS 20 Lbs. Net When Packed Lido Brand Mfgd. By DeMartini Mac. Brooklyn, N.Y. SEMOLINA MACARONI."

CHARGE: 402(a)(3)—contained filth (insects and insect fragments); and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 10-3-62. \$1,000 fine.

28910. Spaghetti, egg noodles, and macaroni. (F.D.C. No. 45192. S. Nos. 34-792 R, 34-794 R, 34-979 R.)

INFORMATION FILED: 3-5-63, E. Dist. N.Y., against G. Santoro & Sons, Inc., Brooklyn, N.Y., and Joseph Santoro.

ALLEGED VIOLATIONS: G. Santoro & Sons, Inc., gave to a company engaged in shipping egg noodles and spaghetti into interstate commerce, a guaranty to the effect that no article shipped under the guaranty would be adulterated; thereafter, on 6-13-60 and 6-16-60, the defendants rendered the guaranty false by shipping quantities of egg noodles and spaghetti which were adulterated, to the holder of the guaranty at Long Island City, N.Y.

On 6-10-60, the defendants also shipped from Brooklyn, N.Y., to Perth Amboy, N.J., quantities of macaroni which were adulterated.

LABEL IN PART: (Ctn.) "Green Circle Macaroni 20 Lbs Net Dist. By Flagstaff Foods Perth Amboy, N.J."

CHARGE: 402(a)(3)—contained insect fragments; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 4-25-63. Corporation—\$1,500 fine; individual—\$750 fine, \$500 of which was suspended, and probation for 1 year.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

28911. Wheat. (Inj. No. 357.)

COMPLAINT FOR INJUNCTION FILED: 5-6-59, Dist. N. Dak., against Kulm Milling Co., a corporation, Kulm, N. Dak., and Reinhold Beich, president, and Fred Rossman, secretary-treasurer.

CHARGE: The complaint alleged that the defendants were engaged in the operation of a grain elevator facility at Kulm, N. Dak., that two buildings were used for the storage of grain, a main elevator house and an annex, some distance away, that the defendants were engaged at Kulm, N. Dak., in the business of storing and distributing wheat for human consumption, and had been shipping in interstate commerce, wheat which was adulterated within the meaning of 402(a)(3) and 402(a)(4).

It was alleged further that the food consisted in part of a filthy substance by reason of the presence in and on the wheat of rodent excreta pellets, bird excreta fragments, insects, insect parts, and urine; and that the wheat was being held at the defendants' grain elevator at Kulm, N. Dak., under insanitary conditions whereby it may have become contaminated with filth; thereby rendering the food adulterated within the meaning of 402(a)(3) and 402(a)(4).

The complaint alleged further that the insanitary conditions in defendants' main elevator house, where wheat for human consumption was held, resulted from and consisted of a dead mouse on the window ledge 4 feet above the wheat in bins 3 and 4, and a dead mouse on the surface of the wheat near the north side of bins 3 and 4; an estimated 200 rodent excreta pellets on the eave line about 3½ feet above the grain in the southeast corner of bins 3 and 4, and an estimated 200 rodent excreta pellets along the eave line on the east wall above bins 3 and 4; and rodent excreta pellets on much of the surface of the wheat in bins 3 and 4; in a one-half pint sample of wheat, taken from the north side of bins 3 and 4, there were about 175 mouse excreta pellets, as well as urine on all kernels tested; in a one and one-half pint sample of wheat, taken from the southeast corner of bins 3 and 4, there were about 500 mouse excreta pellets, a bird excreta fragment, and a feather, as well as urine on all kernels tested; similar filth was found in the one-pint sample of wheat taken from the northwest corner and in the one-half pint sample taken from the southwest corner of bins 3 and 4; there was a dead mouse on the surface of the wheat in the northwest corner, and rodent excreta pellets on the surface of the wheat in bin 12; there were about 330 mouse excreta pellets in a one pint sample of wheat taken from the southwest corner of bin 12, and in a one-half pint sample of wheat taken from the surface in the northeast corner of bin 12 there were about 350 mouse excreta pellets and one feather; in a one-fifth pint sample of wheat taken from the surface in the southwest corner of bin 12, there were 40 mouse excreta pellets, and one flat grain beetle and urine on more than half of the kernels tested; and rodent entry holes were noted in bin 12 and two large holes were in the floor near the Carter cleaner in the center of the elevator, as well as numerous other openings where rodents and birds could enter the building.

The complaint alleged also that there were about 11,000 bushels of wheat stored in the annex; and that a live mouse was seen near the window at

*See also No. 28908.

the south end, and another live mouse running along the eave line at the east wall; about 50 mouse excreta pellets were seen along the sill of the south window, and in the chute there was a mouse nest with 3 live adult and 4 live baby mice; rodent excreta pellets were on the surface of the wheat; in a one-pint sample of wheat taken from under the doorway there were about 220 mouse excreta pellets and urine on all the kernels tested; and other samples of wheat taken from this elevator showed numerous mouse excreta pellets, bird excreta, insects, and urine on the kernels.

The complaint alleged further that the defendants were well aware that their activities were in violation of the Act; that inspections of the defendants' grain elevator at Kulm, N. Dak., were made on 2-19 and 20-59, and again on 3-3-59, by inspectors of the Food and Drug Administration, at which times the insanitary conditions in the elevator were called to the attention of the defendants; that in addition, 4 cars of wheat shipped by this elevator on 2-25, 3-4, and 3-17, 1959, were sampled in Minnesota and found to contain rodent pellets; and that despite the warnings conveyed to the defendants by the inspections and samplings, the defendants had failed to correct the insanitary conditions in the elevator and continued to ship into interstate commerce, wheat for human consumption which was adulterated.

DISPOSITION: On 5-5-59, a temporary restraining order was entered. Thereafter it was stipulated by the defendant and the Government that prior to the commencement of the injunction proceeding, the defendants used two buildings for the storage of grain, a main elevator and an annex; that the main elevator house of the Kulm Milling Company, a corporation, had been cleaned, renovated and rendered suitable for the storage of wheat for human consumption, and had been inspected and approved by the Food and Drug Administration; that the annex building of the Kulm Milling Company, a corporation, had not been cleaned, renovated or rendered suitable for the storage of wheat for human consumption, and was not presently being used for storage of wheat, and it was not contemplated that it would be so used; that all of the wheat on hand at the time the injunction proceeding was commenced had been removed and cleaned or otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and brought into compliance with the provisions of the Act; and that the permanent injunction against the defendants as pertains to the main elevator building might be denied and as pertains to the annex building might be granted.

On 12-17-59, a consent decree of permanent injunction was filed, pursuant to the above stipulation. The decree perpetually enjoined and restrained the defendants from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, in violation of the Federal Food, Drug, and Cosmetic Act, wheat for human consumption held in the defendants' annex building at Kulm, N. Dak., until (a) the annex building was thoroughly cleaned, renovated and rendered suitable for the storage of wheat for human consumption and all insect and rodent filth was removed from the annex; and (b) the annex building was inspected by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and a report made to the court stating the annex building had been cleaned, renovated and was suitable for the storage of wheat for human consumption.

28912. Wheat. (Inj. No. 369.)

COMPLAINT FOR INJUNCTION FILED: 2-3-60, W. Dist. Mich., against Ivan Whan, t/a Farmers Elevator Co., Pewamo, Mich.

CHARGE: The complaint alleged that the defendant was engaged in operating at Pewamo, Mich., a grain elevator for the storage and distribution of wheat and other grains for human consumption, and was shipping in violation of the law such foods which were held at that elevator under insanitary conditions whereby they may have become contaminated with filth thereby rendering them adulterated within the meaning of 402(a)(4).

The complaint alleged further that the insanitary conditions in the defendant's grain elevator at Pewamo, Mich., resulted from and consisted of the storage of such foods in wooden bins containing openings that permitted the entry of rodents and insects; the storage of the foods in concrete stave silos containing openings that permitted the entry of rodents, insects, and birds; the presence on the surface of wheat in the wooden bins of rodent excreta pellets, rodent tunneling, rodent tracks, and live mice; the presence on the surface of the wheat in the silos of rodent excreta, rodent tunnels, bird excreta, pigeon eggs, feathers, nesting material, and live nesting pigeons; live insect infestation in the foods stored in the elevator; openings in the foundations of the elevator permitting the entry of rodents; rodent runways, and rodent-gnawed holes in runways in the wooden bin walls; rodent excreta pellets and tracks in the alleyway between the bins; open, unscreened and broken windows; rodent tracks and insect trails in the headhouse and around the seed cleaner on the first floor of the elevator; rodent and bird tracks on the wooden bin walls and on planks over the bins; openings on the conveying equipment allowing access by rodents; and accumulations of dust, grain, and other nondescript items throughout the elevator affording harborage to rodents.

The complaint alleged also that the defendant was well aware that his activities were in violation of the law; that inspections of the defendant's elevator at Pewamo, Mich., were made on 12-4 and 5-58, 4-7 and 8-59, and 10-1 and 2-59, by inspectors of the Food and Drug Administration, and at each of those inspections the insanitary conditions of the elevator were called to the defendant's attention; and that despite the warnings conveyed to the defendant by such inspections, the defendant failed to correct the insanitary conditions at the elevator and continued to ship into interstate commerce, wheat and other grains for human consumption which were adulterated as specified above.

DISPOSITION: On 3-8-60, a temporary restraining order was filed, and on 8-19-60, a consent decree of preliminary injunction was filed.

The decree enjoined the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, wheat and other grains for human consumption and any similar articles of food which were adulterated within the meaning of 402(a)(4) in that they had been held under insanitary conditions whereby they may have become contaminated with filth.

The decree further enjoined the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, wheat and other grains for human consumption and any similar articles of food held at defendant's grain elevator at Pewamo, Mich., unless and until:

(a) the elevator was thoroughly cleaned and renovated and rendered suitable for use in connection with the storage of wheat and other grains for human consumption, and any similar articles of food, namely, unless and until all rodent, insect, and bird filth was removed from the elevator and the equipment used in storing such food was cleaned; all rodent, insect, and bird infestation in and about the elevator was eliminated; the means of ingress and egress of the elevator and the storage bins thereof by rodents, insects and birds were closed; the windows were screened and the broken windows were repaired; and any similar insanitary conditions which might result in the contamination with filth of wheat and other grains for human consumption or any similar articles of food, while held at the elevator were eliminated;

(b) all of the wheat and other grains for human consumption and any similar articles of food which were on hand at the elevator at the time the elevator was cleaned, renovated, and rendered suitable for the storage of food for human consumption was destroyed, denatured for use as animal feed, or cleaned and otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and thus brought into compliance with the provisions of the law.

On 9-24-62, after an inspection of the subject premises by the representatives of the Food and Drug Administration of the Department of Health, Education, and Welfare showed satisfactory sanitary conditions existed at the elevator, the injunction was dissolved and the case dismissed pursuant to stipulation.

28913. Wheat. (F.D.C. No. 44447. S. No. 30-122 R.)

QUANTITY: 105,000 lbs. at Minneapolis, Minn.

SHIPPED: 4-21-60, from Zeeland, N. Dak., by E. M. Levi Elevators, Inc.

LIBELED: 4-28-60, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 5-2-60. Consent—claimed by E. M. Levi Elevators, Inc., and denatured for use as animal feed.

28914. Wheat. (F.D.C. No. 44466. S. No. 12-404 R.)

QUANTITY: 300 bushels, at Glendale, Mich.

SHIPPED: On or about 5-3-60, from Chicago, Ill. (This was a return shipment.)

LIBELED: 5-23-60, W. Dist. Mich.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-12-60. Consent—destruction.

28915. Wheat. (F.D.C. No. 45804. S. No. 48-115 R.)

QUANTITY: 126,200 lbs. at Ottawa Lake, Mich.

SHIPPED: 5-9-61, from Hemlock, Mich., by Hemlock Farmer's Cooperative, to Toledo, Ohio, and on 5-15-61, reshipped to Ottawa Lake, Mich.

LIBELED: 5-25-61, E. Dist. Mich.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-19-61. Consent—claimed by Michigan Elevator Exchange, Lansing, Mich., and reconditioned; 2,180 lbs. denatured.

28916. Wheat. (F.D.C. No. 47763. S. No. 70-231 T.)

QUANTITY: 115,000 lbs., at Minneapolis, Minn.

SHIPPED: 5-25-62, from Holmquist, S. Dak., by Farmers Elevator Co.

LIBELED: 6-20-62, Dist. Minn.

CHARGE: 402(a) (2) (B)—when shipped, the article contained a pesticide chemical, namely, a mercurial compound, which was unsafe within the meaning of 408(a) since no tolerance or exemption for the requirement of a tolerance for such pesticide chemical on wheat has been prescribed by regulations.

DISPOSITION: 6-22-62. Consent—claimed by Farmers Elevator Co., of Holmquist, S. Dak., and reconditioned by scouring; 40,200 lbs. destroyed.

28917. Unpopped popcorn and rice. (F.D.C. No. 44651. S. Nos. 13-865 P, 61-451 P, 61-456 P.)

INFORMATION FILED: 10-6-60, N. Dist. Ind., against Indiana Wholesale Food Supply Co., Inc., Gary, Ind., and Maurice Yonover, president.

ALLEGED VIOLATION: Between 10-28-57 and 8-13-59, the defendants caused quantities of popcorn and rice, while held for sale after shipment in interstate commerce, to be held in a building accessible to insects, and to be exposed to contamination by insects, which acts resulted in the articles being adulterated.

CHARGE: 402(a) (3)—the popcorn contained adult insects and insect larvae, one lot of rice contained adult insects, insect pupae, insect larvae, and insect fragments, and a second lot of rice contained adult insects, insect pupae, insect larvae, and insect cast skins; and 402(a) (4)—all lots held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 7-10-61. Corporation—\$1,500 fine, plus costs; Yonover—\$1,500 fine.

28918. Unpopped popcorn. (F.D.C. No. 44882. S. Nos. 2-230/4 R.)

QUANTITY: 266 cases, each containing 24 1-lb. bags, and 143 cases, each containing 12 2-lb. bags of popcorn, at Charlotte, N.C.

SHIPPED: Between 8-25-59 and 3-18-60, from Ridgway, Ill., and Nashville, Tenn.

LIBELED: 9-12-60, W. Dist. N.C.

CHARGE: 402(a) (3)—contained insects while held for sale.

DISPOSITION: 10-18-60. Default—destruction.

28919. Rice. (F.D.C. No. 48840. S. No. 75 V.)

QUANTITY: 50 25-lb. bags, at Winston-Salem, N.C., in possession of Clyde L. Foy Co.

SHIPPED: 1-28-63, from Memphis, Tenn.

LIBELED: 4-5-63, M. Dist. N.C.

CHARGE: 402(a) (3)—contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 5-2-63. Default—destruction.

28920. Rice. (F.D.C. No. 47975. S. Nos. 58-774 T, 83-291 T.)

QUANTITY: 26 100-lb. bags and 19 25-lb. bags at Wichita, Kans

SHIPPED: 6-14-62, from Stuttgart, Ark.

LIBELED: On or about 9-14-62, Dist. Kans.

CHARGE: 403(a)(3)—contained insects, insect larvae, and cast skins while held for sale.

DISPOSITION: 3-25-63. Default—delivered to a public institution for use as animal feed.

CHOCOLATE, CONFECTIONERY AND RELATED PRODUCTS

CHOCOLATE PRODUCTS

28921. Chocolate and cocoa products. (Inj. No. 375.)

COMPLAINT FOR INJUNCTION FILED: 2-12-60, W. Dist. Wash., against Washington Chocolate Co., a corporation, Seattle, Wash.

CHARGE: The complaint alleged that the defendant operated a plant at Seattle, Wash., for the preparation, packing, holding, and distribution of various types of chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy; that the defendant shipped such foods which were adulterated within the meaning of 402(a)(3) and 402(a)(4); that such foods consisted in part of a filthy substance by reason of the contamination of such foods with rodent and insect filth; and that such foods were prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth thereby rendering such foods adulterated.

The complaint alleged further that the insanitary conditions at the defendant's plant resulted from and consisted of insect larvae on three walls of the cocoa bean room; rodent excreta pellets on a lot of cocoa bean shells stored along the north wall of the cocoa bean room; insects flying near a lot of bags of dried milk solids stacked against the cooler in the north wing of the first floor; insects on a tier of the bags containing the milk solids in the north wing of the first floor; flies in the "hot room" flying near open pans of chocolate; the use of leftover candy and other scrap material containing insect webbing, in the preparation of new batches of finished candy; the use of chocolate sweepings as an ingredient in new batches of candy; rodent excreta pellets in the cloth tubes of the cocoa and sugar mills on the second floor; rodent excreta pellets on the floor of the north wing of the second floor; two mice and approximately 300 mouse excreta pellets found beneath a tier of bags of cocoa powder along the north wall of the second floor; rodent excreta pellets on cloth covers of carts containing chocolate nibs; a beetle-infested cart containing empty burlap bags on the west end of the north wing of the second floor; rodent excreta pellets in the bottom of the aforementioned cart; the placing of cocoa butter onto a tray containing rodent excreta pellets; an unscreened door to the restroom which was left open; debris stacked around the outside of the building which provided a harborage for rodents; piles of old machinery, cartons, barrels, and other materials on the second floor of the south wing which provided a harborage for rodents and made cleaning difficult; employees in the plant who did not wear head coverings; and the presence of numerous openings in the plant that permitted rodent and insect entry.

The complaint alleged further that the defendant was aware that its activities were in violation of the law; that since 1942 several inspections had been made of defendant's plant by inspectors of the Food and Drug Administration; that inspections of defendant's plant at Seattle, Wash., were made by in-

spectors of the Food and Drug Administration during October 1959, December 1959, and on 1-13-60, at which times the insanitary conditions in the plant were called to the defendant's attention; that a Libel of Information (*United States v. 30 160-lb. bags * * * and 246 140-lb. bags of Cocoa Beans, Admiralty No. 16563*), was filed 11-12-59, in the United States District Court for the Western District of Washington praying that articles of cocoa beans be seized and condemned by reason of adulteration; that this action was terminated by a Consent Decree of Condemnation; and that despite the warnings conveyed to the defendant by the inspections, the defendant failed to correct the insanitary conditions at its plant and continued to ship into interstate commerce, food which was adulterated as specified above.

DISPOSITION: On 2-15-60, the court entered an order requiring the defendants to show cause why a preliminary injunction against the defendant should not be granted pending the final determination of the action. On 2-18-60, the defendant having consented, the court entered a decree of permanent injunction enjoining the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods such as chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy, which were adulterated within the meaning of 402(a) (3) in that it consisted in part of a filthy substance, and within the meaning of 402(a) (4) in that they have been prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth.

The decree further enjoined the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods for human consumption, such as chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy, and any similar articles of food, prepared, packed and held at defendant's plant at 528 Pontius Avenue North, Seattle, Wash., unless and until:

(a) the plant was thoroughly cleaned and rendered suitable for use in connection with the preparation, packing, and holding of food for human consumption, such as chocolate and cocoa products, including dark chocolate (chocolate liquor), milk chocolate, chocolate coatings, cocoa butter, and candy, and any similar article of food, unless and until all rodent and insect filth was removed from the plant and the equipment used in the preparation, packing and storing of foods was cleaned; all rodent and insect filth in and about the plant was eliminated; the means of ingress and egress by rodents and insects were closed and any similar insanitary conditions which may result in the contamination of foods for human consumption while prepared, packed, or held at the plant were eliminated;

(b) all of the foods on hand at the plant at the time the plant was cleaned, renovated, and rendered suitable for the preparation, packing and storage of food for human consumption were destroyed, denatured for use as animal feed or cleaned or otherwise segregated, reconditioned, processed or disposed of under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare;

(c) an inspection was made of the plant by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and a report filed with the court by him showing that the above-described, or any similar, insanitary conditions no longer existed.

The decree of permanent injunction also noted that the defendant had appeared and had filed affidavits from which it appeared that it voluntarily, on 1-29-60, prior to the filing of this action, closed its plant, suspended all manufacturing therein and suspended all sales and shipments, and that all manufacturing and sales and shipments since then were voluntarily suspended, and it further appeared that defendant had, during the voluntary closure of its plant, exercised great effort to remove all objectionable matter from and objectionable conditions in the plant, and that the plant might then be ready for resumption of manufacturing subject to an official inspection which had tentatively been arranged for on the day following the entry of this order, and that it further appeared that the defendant had voluntarily undertaken an analysis of all codes of foodstuffs manufactured by it and then in its stock, and had to date submitted four reports on such analysis of a number of such codes, and that it had been tentatively arranged that the defendant was to be advised promptly as to which codes so analyzed were thereby ready to be released for shipment into trade channels.

Thereafter, Food and Drug Administration inspectors inspected the defendant's plant and witnessed the destruction of 40,271 lbs. of chocolate and cocoa products. On 8-4-61, the defendant filed a motion to dissolve the injunction. On 4-10-62, by consent of all parties, and the defendant having fully and completely complied with the requirements of the Food and Drug Administration in removing all objectionable matter from, and all objectionable conditions in, the defendant's plant, the permanent injunction was dissolved and dismissed.

CONFECTIONERY*

28922. Candy. (Inj. No. 349.)

COMPLAINT FOR INJUNCTION FILED: 12-22-58, N. Dist. Ga., against Beckham Candy Co., a corporation, Atlanta, Ga., and Louis S. Horowitz, president and treasurer.

CHARGE: The complaint alleged that the defendants engaged at Atlanta, Ga., in the business of preparing, packing, and distributing various types of candy, such as hard candy, suckers, beads, and apple pops, that they were shipping in interstate commerce, candy which was adulterated within the meaning of 402(a)(1), 402(a)(3) and 402(a)(4); and that the candy consisted in part of a deleterious substance which might render it injurious to health by reason of the presence of glass fragments and metal fragments, that the candy was unfit for food by reason of the presence of glass fragments and metal fragments and that the candy was prepared and packed under insanitary conditions whereby it might have become contaminated with filth or whereby it might have been rendered injurious to health.

The complaint alleged further that the violative conditions in the defendants' plant at Atlanta, Ga., where the candy was prepared and packed, resulted from and consisted of a plant maintained in a generally cluttered, crowded and messy condition; the presence of pools of water, discarded sucker sticks, broken pieces of glass, broken bits of candy, empty soft drink bottles and other miscellaneous debris on the floor; the presence of uncovered containers of starch and coloring, open sugar bags, lunch bags and empty soft drink bottles on the tables in the manufacturing area; unused equipment left in a messy condition and containing pieces and lumps of candy, bottles,

*See also No. 28993.

broken glass, broken glass thermometers and other miscellaneous debris; the presence of cigarette butts on candy machines; glass salt shakers, glass drinking glasses, glass milk bottles and lunch bags on shelves over candy conveyer belts under which unwrapped candy passed; and untidy and unsupervised employees.

The complaint alleged further that the defendants were well aware that their activities were in violation of the law, that since 1942, numerous inspections had been made of defendants' plant by inspectors of the Food and Drug Administration; that the defendants had been warned by these inspections against the interstate shipment of adulterated foods and about the inherent danger of maintaining their generally cluttered, crowded and messy plant; that the defendants pleaded guilty to the interstate shipment of filthy candy prepared under insanitary conditions on 10-13-47, and were fined \$500; that in 1946, defendant Louis S. Horowitz was temporarily enjoined against the preparation of adulterated candy under insanitary conditions; that the defendants were also warned by a hearing in October 1957; and that despite the warnings conveyed by the inspections, criminal prosecution, temporary injunction, and hearing, the defendants continued to ship into interstate commerce, candy adulterated in the above manner.

DISPOSITION: On 1-6-59, a consent decree of permanent injunction was entered which enjoined the defendants from directly or indirectly, introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, candy, such as hard candy, suckers, beads, apple pops, or any other such article of food which:

(a) consisted in part of a deleterious substance which may render it injurious to health by reason of the presence in the candy of glass fragments, metal fragments, or any other deleterious substance; or

(b) was unfit for food by reason of the presence in the candy of glass fragments, metal fragments, or any other similar substance; or

(c) had been prepared and packed under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health, namely, conditions resulting from and consisting of a plant maintained in a generally cluttered, crowded and messy condition; the presence of pools of water, discarded sucker sticks, broken pieces of glass, broken bits of candy, empty soft drink bottles and other miscellaneous debris on the floor; the presence of uncovered containers of starch and coloring, open sugar bags, lunch bags and empty soft drink bottles on the tables in the manufacturing area; unused equipment left in a messy condition and containing pieces and lumps of candy, bottles, broken glass, broken glass thermometers and other miscellaneous debris; the presence of cigarette butts on candy machines; glass salt shakers, glass drinking glasses, glass milk bottles and lunch bags on shelves over candy conveyer belts under which unwrapped candy passed; untidy and unsupervised employees; or any other insanitary conditions.

28923. Candy. (F.D.C. No. 47276. S. No. 62-816 T.)

QUANTITY: 1,014 7½-oz. boxes of milk chocolate peanuts, at Minneapolis, Minn., in possession of Leo Singer Candy & Tobacco Co.

SHIPPED: 1-4-62, from East Cambridge, Mass.

LABEL IN PART: (Box) "Ver-E-Best Candies Milk Chocolate Peanuts * * * Singer Candy Co. Minneapolis Minn."

RESULTS OF INVESTIGATION: The article had been repacked by the dealer into the boxes described above which failed to bear a statement of ingredients.

LIBELED: 4-5-62, Dist. Minn.

CHARGE: 403(i)(2)—while held for sale, the article's label failed to bear the common or usual name of each of its ingredients.

DISPOSITION: 1-2-63. Default—destruction of the 390 boxes actually seized, because of their unfitness for food use at the time of the final decree.

28924. Peppermint lozenges (candy). (F.D.C. No. 48725. S. No. 16-852 V.)

QUANTITY: 51 cases, each containing 24 bags, at Cincinnati, Ohio.

SHIPPED: Between 1-22-63 and 2-4-63, from Chicago, Ill., by Peanut Specialty Co.

LABEL IN PART: (Bag tag) "Fresh Candy Treats * * * Old Fashioned Lozenges Ingredients * * * 10 Ozs. Manufactured By Peanut Specialty Company Chicago, Illinois."

RESULTS OF INVESTIGATION: Examination showed that the article was approximately 5 percent short weight.

LIBELED: 3-19-63, S. Dist. Ohio.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of quantity of contents since label statement "10 Ozs." was inaccurate.

DISPOSITION: 7-30-63. Default—ordered delivered to charitable institutions.

28925. Peppermint sticks (candy). (F.D.C. No. 48850. S. No. 1-718 V.)

QUANTITY: 298 cases, each containing 24 pkgs., at Hickory, N.C.

SHIPPED: 2-7-63, from Greenville, S.C., by Meadors, Inc.

LABEL IN PART: (Pkg.) "Meadors Peppermint pure sugar sticks Net Weight 6¼ Oz. * * * This box contains 20 Pure Sugar Sticks * * * Meadors, Inc., Greenville, S.C."

RESULTS OF INVESTIGATION: Examination showed that the article averaged approximately 2 percent short weight.

LIBELED: 4-19-63, W. Dist. N.C.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents, since the label statement "Net Weight 6¼ Oz." was inaccurate.

DISPOSITION: 5-15-63. Consent—claimed by Meadors, Inc., and relabeled.

28926. Chocolate nonpareils (candy). (F.D.C. No. 48818. S. No. 68-922 V.)

QUANTITY: 31½ cases, each containing 24 16-oz. bags, at Baltimore, Md.

SHIPPED: On 2-20-63 and 3-8-63, from Westville, N.J., by Letty Lane Co.

LABEL IN PART: (Bag) "Letty Lane Chocolate Nonpareils * * * Ingredients * * * Artificial Flavoring * * * Letty Lane Co., Westville, N.J."

RESULTS OF INVESTIGATION: Examination showed the article to be flat, disc-shaped, dark brown pieces of candy having one surface entirely coated with white confectionery beads. The article was contained in a clear plastic bag on which the manufacturer's name and address and the statement of ingredients were printed in white ink and were inconspicuous due to lack of contrast with the white coated candy in the background.

LIBELED: 3-25-63, Dist. Md.

CHARGE: 403(f)—when shipped, the information required under 403(e)(1), 403(i)(2), and 403(k), namely, the name and address of the manufacturer, packer, or distributor, the statement of ingredients, and the declaration of artificial flavoring, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 7-31-63. Consent—destruction because article had spoiled.

SUGAR AND SIRUP

28927. Sugar. (F.D.C. No. 48676. S. No. 19-025 V.)

QUANTITY: 130 100-lb. bags, at Oklahoma City, Okla., in possession of Central Dairy Products Co.

SHIPPED: 8-17-62, from Three Oaks, La.

LIBELED: 1-18-63, W. Dist. Okla.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-4-63. Consent—claimed by Central Dairy Products Co. Segregated; 6,400 lbs. destroyed.

28928. Sirup. (F.D.C. No. 48131. S. No. 58-682 T.)

QUANTITY: 835 cases, each containing 12 12-oz. btls., at Columbus, Ohio.

SHIPPED: 8-28-62, from Oakland, Nebr., by General Syrup Corp.

LABEL IN PART: (Btl.) "Syrup 85% Cane 15% Maple Food Club * * * Distributed by Topco Associates, Inc. Chicago, Illinois."

RESULTS OF INVESTIGATION: Investigation disclosed that the shipper added imitation maple flavor to the sirup.

LIBELED: 9-28-62, S. Dist. Ohio.

CHARGE: 403(i)(2)—when shipped, the article failed to bear a label containing the common or usual name of each ingredient; and 403(k)—the article contained an artificial flavor, namely, imitation maple flavor, and its labeling failed to state that fact.

DISPOSITION: 10-29-62. Claimed by General Syrup Corp., and ordered released for relabeling.

DAIRY PRODUCTS

BUTTER

28929. Butter. (F.D.C. No. 47365. S. Nos. 4-383 T, 25-905 T.)

INFORMATION FILED: 9-14-62, N. Dist. Ohio, against Minerva Dairy, Inc., Minerva, Ohio, and Delbert L. Mueller, vice president.

SHIPPED: 11-15-61 and 12-13-61, from Ohio to West Virginia.

LABEL IN PART: "MINERVA MAID BRAND Creamery Butter MANUFACTURED BY MINERVA DAIRY INC., MINERVA, OHIO WEIGHT 1 POUND."

CHARGE: 402(b)(1)—when shipped, a valuable constituent, namely, milk fat, had been in part omitted from the article; 402(b)(2)—a product which contained less than 80 percent by weight of milk fat was substituted for butter; and 403(e)(2)—(11-15-61 shipment) the label of the article failed to contain an accurate statement of the quantity of contents.

PLEA: Guilty by the corporation to 3 counts; by Mueller to 1 count.

DISPOSITION: 4-5-63. Corporation—\$250 fine, and probation for 1 year; Mueller—\$250 fine suspended.

28930. Butter. (F.D.C. No. 47646. S. No. 22-862 V.)

QUANTITY: 57 64-lb. ctns., at Denver, Colo.

SHIPPED: 2-9-63, from Hillsboro, Kans., by Tip Top Dairies Co.

LABEL IN PART: "Tip Top Dairies Co. Hillsboro, Kansas Butter."

LIBELED: 3-4-63, Dist. Colo.

CHARGE: 402(b)(2)—when shipped, a product containing less than 80 per cent by weight of milk fat had been substituted for butter.

DISPOSITION: 4-19-63. Consent—claimed by Tip Top Dairies Co. and re churned.

CHEESE

28931. Grated cheese. (F.D.C. No. 48951. S. Nos. 83-084/5 V.)

QUANTITY: 35 100-lb. bags, at North Bergen, N.J.

SHIPPED: 2-28-63 and 3-20-63, from Hinesburg, Vt., by C. Economou Cheese Corp.

LABEL IN PART: (Bag) "32 Romanello Cheese Mfg. by Economou Cheese Corp. Hinesburg, Vt."

LIBELED: On or about 5-3-63, Dist. N.J.

CHARGE: 402(a)(3)—contained rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 6-27-63. Default—destruction.

MISCELLANEOUS DAIRY PRODUCT

28932. Nonfat dry milk. (F.D.C. No. 48849. S. Nos. 21-100 V, 23-507 V.)

QUANTITY: 101 cases, each containing 12 1-lb. 9.6-oz. pkgs., at Salt Lake City, Utah, in possession of Sunfresh Products of Utah, Inc.

SHIPPED: Between 2-14-63 and 4-4-63, from Eau Claire, Wis., by Dairy Maid Products Co.

LABEL IN PART: (Pkg.) "Flash * * * Instant Nonfat Dry Milk * * * Distributed by Dried Milk Products Co-op., Eau Claire, Wis."

ACCOMPANYING LABELING: Loose-leaf sales manual containing an assortment of 10 different reprints of various newspaper articles and sales literature, and booklet entitled "Medical Reference Material."

RESULTS OF INVESTIGATION: The sales manual had been compiled by the dealer and together with the above booklet was used in promoting sales of the article.

LIBELED: 4-18-63, Dist. Utah.

CHARGE: 403(a)—when shipped and while held for sale, the labeling of the article contained false and misleading representations that the article was adequate and effective to promote growth, strength, sound teeth and good digestion, energy, healthy nerves, eyes and skin, sound bones, regulate muscle tissue and nerve processes, long life, physical development, resistance to infection and disease, mental vigor, body weight maintenance, and functioning of vital organs and glands, and for the treatment and prevention of heart attacks and strokes, heart failure, atherosclerosis, arteriosclerosis

(hardening of the arteries), abnormal blood cholesterol, coronary diseases, heart and artery diseases, obesity, gallstones, and gall bladder disease.
DISPOSITION: 6-21-63. Default—delivered to a State institution.

EGGS

28933. Frozen eggs. (F.D.C. No. 48106. S. No. 57-333 T.)

QUANTITY: 270 30-lb. cans, at Wichita Falls, Tex., in possession of Denison Poultry & Egg Co.

SHIPPED: The eggs were prepared in part from whole shell eggs shipped between April 1962 and August 1962, from Kansas and Oklahoma.

LABEL IN PART: (Can) "Frozen Eggs Denison Poultry & Egg Co.," "Denison P & Egg 509 Brook St. W.F. Tex. Whole Eggs," "Denison Poultry & Egg 509 Brook St. W.F. Tex. * * * Whole Eggs," and "D P & E Co Whole Egg 509 Brook St. W. Falls, Texas."

LIBELED: 10-4-62, N. Dist. Tex.

CHARGE: 402(a)(3)—contained decomposed eggs while held for sale.

DISPOSITION: 12-6-62. Consent—claimed by Denison Poultry & Egg Co., and denatured.

28934. Frozen eggs. (F.D.C. No. 48350. S. No. 47-341 V.)

QUANTITY: 265 30-lb. cans at Peoria, Ill.

SHIPPED: 6-25-62, from Burlington, Wis.

LIBELED: 11-7-62, S. Dist. Ill.

CHARGE: 402(a)(3)—contained decomposed eggs while held for sale.

DISPOSITION: 1-7-63. Consent—claimed by Paul Kramer, t/a Echo Lake Farm Produce Co., Burlington, Wis. Segregated; 46 cans denatured.

28935. Frozen eggs. (F.D.C. No. 48709. S. No. 26-674 V.)

QUANTITY: 150 30-lb. cans, at Detroit, Mich.

SHIPPED: 1-7-63, from Chicago, Ill., by Gross Egg Co., Inc.

LABEL IN PART: "Frozen Whole Eggs Packed by Rock Island Produce Co. Rock Island, Illinois. Illinois License No. 13."

LIBELED: 2-20-63, E. Dist. Mich.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 4-29-63. Default—destruction.

28936. Frozen eggs. (F.D.C. No. 48614. S. Nos. 792 V, 2-696/7 V, 60-103 V.)

QUANTITY: 1,015 30-lb. cans, at Miami, Fla.

SHIPPED: 11-24-62, from outside the State of Florida.

LIBELED: 2-5-63, S. Dist. Fla.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 5-6-63. Default—destruction.

28937. Frozen eggs. (F.D.C. No. 48526. S. Nos. 16-873/4 T, 16-888 T, 16-891 T.)

INFORMATION FILED: 7-9-63, S. Dist. Ind., against Martin's Hatchery, Inc., Ramsey, Ind., and Robert P. Martin, vice president.

SHIPPED: Between 8-31-61 and 10-6-61, from Indiana to Kentucky.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

PLEA: Guilty.

DISPOSITION: 7-23-63. Corporation—\$400 fine; Martin—taxed court costs.

28938. Frozen eggs. (F.D.C. No. 49018. S. No. 46-483 X.)

QUANTITY: 455 30-lb. cans at Memphis, Tenn.

SHIPPED: 6-4-63, from Birmingham, Ala., by Schneider Bros., Inc.

LABEL IN PART: "Frozen Selected Whole Eggs * * * Packed By Schneider Bros. Inc. Birmingham, Alabama."

LIBELED: 6-25-63, W. Dist. Tenn.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 7-24-63. Consent—claimed by Schneider Bros., Inc., Chicago, Ill. Segregated; 45 cans denatured.

28939. Frozen eggs. (F.D.C. No. 48973. S. No. 8-036 V.)

QUANTITY: 182 30-lb. cans, at Providence, R.I.

SHIPPED: 4-17-63 and 4-27-63, from Roxbury, Mass., by Fleishman Co., to Newport, R.I., and subsequently reshipped to Providence, R.I.

LABEL IN PART: "Whole Eggs Fleishman & Co. 165 Terrace St. Boston 20."

LIBELED: 5-22-63, Dist. R.I.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 7-29-63. Default—destruction.

28940. Frozen eggs. (F.D.C. No. 48828. S. No. 7-635 V.)

QUANTITY: 11 30-lb. cans, at Bridgeport, Conn.

SHIPPED: 4-12-62, from Brooklyn, N.Y., by Quality Egg Co., Inc.

LABEL IN PART: (Can) "Whole Eggs Malto-Dextrin Added * * * Packed by Quality Egg Co., Inc. * * * Brooklyn, N.Y."

LIBELED: 4-2-63, Dist. Conn.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 7-29-63. Default—destruction.

FISH AND SHELLFISH

28941. Caviar. (F.D.C. No. 48666. S. No. 48-912 V.)

QUANTITY: 10 14-oz. cans and 9 7-oz. cans, at San Francisco, Calif.

SHIPPED: 1-17-63, from New York, N.Y., by Iron Gate Products Co., Inc.

LABEL IN PART: (Can) "Caviar Fidelis Malossol Iron Gate Products Co., Inc. New York."

RESULTS OF INVESTIGATION: Investigation showed that the article contained a boron compound.

LIBELED: 3-6-63, N. Dist. Calif.

CHARGE: 402(a)(2)(C)—when shipped, the article contained a food additive, namely, a boron compound, which was unsafe within the meaning of 409, since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409; and 403(e)(2)—the article failed to bear a statement of the quantity of contents.

DISPOSITION: 5-15-63. Default—destruction.

28942. Frozen fish (2 seizure actions). (F.D.C. No. 48502. S. Nos. 17-521/2 V.)

QUANTITY: 1,000 lbs. at Madison, Ind.

SHIPPED: 10-16-62 and 10-22-62, from Chicago, Ill., by Pick-Shapiro Fisheries, Inc.

LABEL IN PART: (Shipping case) "Perch 4 oz. portions," and "Haddock 4 oz. portions."

RESULTS OF INVESTIGATION: Examination showed that all of the fish was pollock.

LIBELED: 1-8-63, S. Dist. Ind.

CHARGE: 403(a)—when shipped, the name of the articles "Perch" and "Haddock" were false and misleading; and 403(b)—the article was pollock fish which was offered for sale under the name of other foods, namely, perch and haddock fish.

DISPOSITION: 2-28-63. Default—released to a public institution for its use.

28943. Frozen haddock fillets. (F.D.C. No. 48601. S. No. 7-534 V.)

QUANTITY: 40 ctns., each containing 5 10-lb. pkgs., at Boston, Mass.

SHIPPED: The fillets were from fish caught by the fishing vessel "Terra Nova" in the waters of the Atlantic Ocean outside the territorial limits of the State of Massachusetts.

LIBELED: 1-14-63, Dist. Mass.

CHARGE: 402(a)(3)—contained decomposed fish fillets when shipped.

DISPOSITION: 6-27-63. Default—ordered destroyed or given to a public or charitable institution for use as animal feed.

28944. Frozen pollock fillets. (F.D.C. No. 48978. S. Nos. 56-272/3 V.)

QUANTITY: 249 ctns., each containing 5 10-lb. ctns., at Gloucester, Mass.

SHIPPED: The fillets were prepared and packed on 4-26-63, from fish caught by the fishing vessel "Rose L. Silva" in the waters of the Atlantic Ocean outside the territorial limits of the State of Massachusetts.

LIBELED: 5-20-63, Dist. Mass.

CHARGE: 402(a)(3)—consisted of decomposed fish fillets when shipped.

DISPOSITION: 6-24-63. Default—ordered destroyed or delivered to a public or charitable institution for use as animal feed.

28945. Frozen perch fillets. (F.D.C. No. 48852. S. Nos. 56-381/82 V.)

QUANTITY: 68 cases, each containing 5 10-lb. ctns., at Gloucester, Mass.

SHIPPED: The fillets were prepared and packed on 3-27-63, from a commingled lot of fish caught by fishing vessels "Lady Of The Rosary" and "Olympia" in the waters of the Atlantic Ocean outside the territorial limits of the State of Massachusetts.

LIBELED: 4-17-63, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 5-9-63. Consent—claimed by Fabet Div., Booth Fisheries Corp., Gloucester, Mass., and reconditioned.

28946. Frozen fish fillets. (F.D.C. No. 48679. S. Nos. 17-523/4 V.)

QUANTITY: 726 lbs., at Madison, Ind.

SHIPPED: 8-14-62 and 9-11-62, from Lowell, Mass., by Commodore Foods, Inc.

LABEL IN PART: (Ctn.) "Quick Frozen Breaded Fish Portions 18 4-Oz. Portions Packed in U.S.A. for Acadia Fisheries, Ltd., Mulgrave, Nova Scotia * * * Ingredients: Choice Skinless Haddock Fillets," and "Sea Pass Brand * * * Breaded Fish Quick Ready to Cook 24 4-oz. portions Net Weight 6 pounds * * * Ingredients: Ocean Perch * * * Distributed by Meletio Sea Co., Inc., St. Louis, Missouri."

RESULTS OF INVESTIGATION: Examination showed the article to be breaded fillets from fish other than haddock or perch.

LIBELED: 1-28-63, S. Dist. Ind.

CHARGE: 402(b) (2)—when shipped, fillets from fish other than haddock or perch had been substituted in whole or in part for the article; 403(a)—the label statements "Haddock" and "Ocean Perch" were false and misleading as applied to a product consisting of fish fillets from fish other than haddock or perch; and 403(b)—fillets from fish other than those claimed on the labels had been offered for sale under the name of another food, namely, haddock or perch.

DISPOSITION: 4-9-63. Consent—claimed by Commodore Foods, Inc., and ordered released for relabeling.

28947. Frozen fish fillets. (F.D.C. No. 48680. S. Nos. 17-581/2 V.)

QUANTITY: 756 lbs. at Richmond, Ind.

SHIPPED: 7-27-62 and 8-14-62, from Lowell, Mass., by Commodore Foods, Inc.

LABEL IN PART: (Ctn.) "Sea Pass Brand Breaded Fish 24 4-ounce portions Net Weight 6 Pounds Ingredients: * * * Cod [or "Haddock"] * * * Distributed by Meletio Sea Co., Inc., St. Louis, Missouri."

RESULTS OF INVESTIGATION: Examination showed the articles to be breaded fish fillets prepared from fish other than cod or haddock.

LIBELED: 1-29-63, S. Dist. Ind.

CHARGE: 402(b) (2)—when shipped, fish fillets other than cod or haddock had been substituted in whole or in part for the article; 403(a)—the label statements "Cod" and "Haddock" were false and misleading as applied to products consisting of fish fillets from fish other than cod or haddock; and 403(b)—fillets from fish other than those claimed on the labels had been offered for sale under the name of another food, namely, cod or haddock.

DISPOSITION: 4-9-63. Consent—claimed by Commodore Foods, Inc., and ordered released for relabeling.

28948. Frozen fish fillets. (F.D.C. No. 48948. S. Nos. 59-861/2 V, 86-106/7 V.)

QUANTITY: 588 cases, each containing 10 5-lb. boxes, at Miami, Fla.

SHIPPED: On an unknown date, from Merida, Yuc., Mexico, by Fernando Gamboa Gamboa.

LABEL IN PART: (Box) "Marca Atlantida Brand Fresh Frozen Fish Fillets Snapper * * * Fernando Gamboa Gamboa, * * * Merida, Yuc. Mexico."

RESULTS OF INVESTIGATION: Examination showed the article to be fillets from grouper fish.

LIBELED: 5-21-63, S. Dist. Fla.

CHARGE: 403(a)—when shipped, the name of the article "snapper" was false and misleading as applied to a product consisting of grouper fish fillets; and 403(b)—the article was grouper fish fillets and was offered for sale under the name of another food, namely, snapper fish fillets.

DISPOSITION: 6-27-63. Consent—claimed by Henderson's Portion Pak, Inc., Coral Gables, Fla., and relabeled.

28949. Frozen cod fillets. (F.D.C. No. 48960. S. No. 56-022 V.)

QUANTITY: 30 cases, each containing 10 5-lb. ctns., at Gloucester, Mass.

SHIPPED: The cod fillets were from fish caught by the fishing vessel "Pilgrim" in the waters of the Atlantic Ocean outside the territorial limits of the State of Massachusetts.

LIBELED: 5-13-63, Dist. Mass.

CHARGE: 402(a)(3)—contained decomposed fish fillets when shipped.

DISPOSITION: 6-24-63. Default—ordered destroyed or given to a public or charitable institution for use as animal feed.

28950. Salted codfish. (F.D.C. No. 48537. S. Nos. 7-975 T, 7-999 T, 62-135 T.)

INFORMATION FILED: 5-24-63, Dist. Mass., against Collins-Lee Co., a corporation, Chelsea, Mass.

ALLEGED VIOLATIONS: On 4-11-62 and 8-6-62, the defendant shipped quantities of adulterated salt codfish from Chelsea, Mass., to Providence, R.I., and Hartford, Conn.

In addition, on 2-3-59, the defendant caused to be given to a firm a guaranty to the effect that products shipped by the defendant to such firm under the guaranty would not be adulterated. On 8-2-62, the defendant caused to be delivered to the holder of the guarantee at Boston, Mass., quantities of salt codfish which were adulterated.

CHARGE: 402(a)(3)—contained insect parts; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-24-63. \$1,000 fine.

28951. Canned shrimp. (F.D.C. No. 48687. S. No. 38-513 V.)

QUANTITY: 409 cases, each containing 24 unlabeled 5-oz. cans, at Biloxi, Miss.

SHIPPED: 10-18-62, from Houma, La., by Grand Caillou Packing Co., Inc.

LIBELED: 1-29-63, S. Dist. Miss.

CHARGE: 402(a)(3)—contained decomposed shrimp when shipped.

DISPOSITION: 2-18-63. Consent—claimed by Grand Caillou Packing Co., Inc.; segregated and reconditioned—237 lbs. of shrimp destroyed.

28952. Frozen shrimp. (F.D.C. No. 48240. S. No. 40-043 V.)

QUANTITY: 394 ctns., each containing 10 5-lb. boxes, at New York, N.Y.

SHIPPED: Prior to 8-2-62, the article was imported from Panama by El Morro Distributors and shipped on 8-2-62, to Jackson, Ohio. On 9-17-62, the article was shipped back to New York.

LABEL IN PART: (Box) "Balboa Brand Fresh Frozen Panama Shrimp * * * Packed by Industria Nacional Oceanica, S.A."

LIBELED: On or about 10-25-62, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained decomposed shrimp when shipped.

DISPOSITION: 11-20-62. Default—destruction.

28953. Frozen frog legs. (F.D.C. No. 48584. S. No. 39-259 V.)

QUANTITY: 3 ctns., each containing 10 boxes, at Montclair, N.J.

SHIPPED: 11-6-62, from New York, N.Y., by Atlas Sea Food, Inc.

LABEL IN PART: (Box) "Kabuki Fresh Frozen Frog Legs Net Wt. 5 Lbs.
Packed By C. Itoh & Co. Ltd. Tokyo, Japan. Product of Japan."

RESULTS OF INVESTIGATION: Examination showed the article to be short weight.

LIBELED: 1-2-63, Dist. N.J.

CHARGE: 403(e) (2)—when shipped, the label of the article failed to bear an accurate statement of the quantity of contents.

DISPOSITION: 9-11-63. Consent—destruction.

FRUITS AND VEGETABLES

CANNED FRUIT

28954. Canned peaches. (F.D.C. No. 47860. S. No. 42-366 R.)

INFORMATION FILED: 11-7-62, N. Dist. Calif., against Stanislaus Food Products Co., a corporation, Modesto, Calif.

SHIPPED: 5-18-61, from Modesto, Calif., to Philadelphia, Pa.

LABEL IN PART: "Food Club Sliced Yellow Freestone Elberta Peaches In Extra Heavy Sirup Distributed by Topco Associates Inc. Chicago, Illinois Contents 1 Lb. 14 Oz."

CHARGE: 403(h) (2)—when shipped, the article fell below the standard of fill of container for canned peaches, since there was not present the maximum quantity of the optional peach ingredient which could be sealed in the container and processed by heat to prevent spoilage without crushing or breaking such ingredient and its label failed to bear a statement that it fell below the standard.

PLEA: Guilty.

DISPOSITION: 1-24-63. \$500 fine.

28955. Canned peaches. (F.D.C. No. 48254. S. No. 3-503 V.)

QUANTITY: 403 cases, each containing 24 1-lb. 13-oz. cans, at Raleigh, N.C.

SHIPPED: 8-10-62, 9-10-62, and 10-1-62, from Harry County, S.C., Corbett Sales Co.

LABEL IN PART: (Can and cases) "Corbett's Polly Peach Brand Peaches Yellow Freestone Halves in Heavy Syrup * * * Packed by Corbett Canning Company, Inc. Tabor City, North Carolina Cecelia, Louisiana."

LIBELED: 11-19-62, E. Dist. N.C.

CHARGE: 403(g) (2)—when shipped, the article failed to conform to the definition and standard for canned peaches since its label failed to bear the name of the optional packing medium present, since its label bore the statement "In Heavy Syrup" whereas the article was packed in a medium designated as "light syrup"; and 403(h) (1)—the article fell below the standard of quality for canned peaches, since all peach units of the article were not pierced by a weight of not more than 300 grams, and since the weight of the largest unit in the container was more than twice the weight of the smallest unit, and its label failed to bear a statement that the article fell below the standard.

DISPOSITION: 1-9-63. Consent—claimed by Corbett Canning Co., and relabeled.

28956. Canned pineapple. (F.D.C. No. 48795. S. No. 38-581 V.)

QUANTITY: 827 6-lb. 12 oz. cans at New Orleans, La.

SHIPPED: 4-12-63, from Taiwan, Republic of China.

LIBELED: 6-11-63, E. Dist. La.

CHARGE: 402(a)(3)—contained decomposed pineapple while held for sale.

DISPOSITION: 7-30-63. Default—destruction.

DRIED FRUIT

28957. Dried apples. (F.D.C. No. 48964. S. No. 43-585 V.)

QUANTITY: 132 50-lb. ctns., at Crosswicks, N.J.

SHIPPED: 12-15-60, from Rochester, N.Y.

LIBELED: On or about 5-14-63, Dist. N.J.

CHARGE: 402(a)(3)—contained mold, insects, and insect larvae, pupae, excreta pellets and webbing while held for sale.

DISPOSITION: 6-20-63. Default—destruction.

28958. Dates. (F.D.C. No. 48694. S. No. 15-267 V.)

QUANTITY: 273 cases, each containing 4 5-lb. bags, at Indianapolis, Ind.

SHIPPED: 10-9-62, from Indio, Calif.

LIBELED: 2-12-63, S. Dist. Ind.

CHARGE: 402(a)(3)—contained insects, insect fragments, and insect larvae while held for sale.

DISPOSITION: 4-10-63. Default—destruction.

28959. Dried prunes. (F.D.C. No. 48934. S. No. 78-601 V.)

QUANTITY: 328 25-lb. cases, at Hines, Ill.

SHIPPED: 10-31-61, from Cupertino, Calif.

LIBELED: 4-26-63, N. Dist. Ill.

CHARGE: 402(a)(3)—contained insects, insect pupae, and insect larvae while held for sale.

DISPOSITION: 5-24-63. Default—destruction.

28960. Raisins. (F.D.C. No. 48730. S. No. 35-471 V.)

QUANTITY: 45 cases, each containing 24 boxes, at Fargo, N. Dak.

SHIPPED: 12-13-62, from Fresno, Calif.

RESULTS OF INVESTIGATION: Investigation indicated that the article had been contaminated and held under insanitary conditions prior to receipt by the dealer (claimant).

LIBELED: 4-2-63, Dist. N. Dak.

CHARGE: 402(a)(3)—contained rodent-contaminated grain particles and chaff; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-15-63. Consent—claimed by Nash Finch Co., Fargo, N. Dak., and destroyed.

MISCELLANEOUS FRUIT PRODUCTS

28961. Cherries in sirup. (F.D.C. No. 47693. S. Nos. 7-964/7 T.)

QUANTITY: 4 500-gal. tanks and 7 50-gal. bbls. of black Normandy cherries, 1 200-gal. tank of green glazed cherries, and 1 200-gal. tank of red maraschino cherries, at New London, Conn., in possession of deRedon Food Products Corp.

SHIPPED: On unknown dates, from outside the State of Connecticut.

RESULTS OF INVESTIGATION: The articles had been shipped in brine and had been placed in sirup by the dealer.

LIBELED: 7-25-62, Dist. Conn.

CHARGE: 402(a) (3)—contained insect parts, *Drosophila* flies, *Drosophila* fly eggs, and maggots; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 11-15-62. Consent—claimed by deRedon Food Products Corp. After an unsuccessful attempt to recondition, the articles were destroyed.

28962. Grape puree. (F.D.C. No. 48473. S. No. 33-361 V.)

QUANTITY: 113 5-gal. cans, at Minneapolis, Minn.

SHIPPED: 10-23-62, from Council Bluffs, Iowa, by Council Bluffs Grape Growers Association.

LIBELED: 12-14-62, Dist. Minn.

CHARGE: 402(a) (3)—contained *Drosophila* fly fragments, other insects, and insect parts when shipped.

DISPOSITION: 1-28-63. Default—destruction.

VEGETABLES AND VEGETABLE PRODUCTS*

28963. Cabbage. (F.D.C. No. 48696. S. No. 17-774 V.)

QUANTITY: 300 50-lb. bags, at Cincinnati, Ohio.

SHIPPED: 1-19-63, from San Benito, Tex., by Alexander Marketing Co.

LABEL IN PART: (Bag) "Alexander's New * * * Texas Cabbage Packed & Shipped by Alexander Marketing Company, San Benito, Texas Product of USA."

LIBELED: 2-5-63, S. Dist. Ohio.

CHARGE: 402(a) (2) (B)—when shipped, the article contained a pesticide chemical, namely, toxaphene, which was unsafe within the meaning of 408(a) since the quantity of such pesticide chemical on the article was not within the limits of the tolerance prescribed by regulations.

DISPOSITION: 2-25-63. Default—destruction.

28964. Carrots. (F.D.C. No. 48495. S. Nos. 52-574/5 V.)

QUANTITY: 137 50-lb. crates, at Seattle, Wash.

SHIPPED: Between 12-4-62 and 12-9-62, from Portland, Oreg., by S. T. Produce.

LIBELED: 12-27-62, W. Dist. Wash.

CHARGE: 402(a) (2) (B)—when shipped, the article contained pesticide chemicals, namely, aldrin and dieldrin, which were unsafe within the meaning of

*See also Nos. 28907, 28908.

408(a) since the quantity of such pesticide chemicals on carrots was not within the limits of the tolerances prescribed by regulations.

DISPOSITION: 1-11-63. Consent—destruction.

28965. Romaine lettuce. (F.D.C. No. 46003. S. No. 25-670 R.)

INFORMATION FILED: 8-17-61, and amended 3-5-63, Dist. Ariz., against John W. Vukasovich, t/a J. (Bud) Vukasovich, Yuma, Ariz.

SHIPPED: 12-5-60, from Yuma, Ariz., to Los Angeles, Calif.

LABEL IN PART: "PRODUCE OF U.S.A. Plenti-Grand SELECTED CALIFORNIA AND ARIZONA VEGETABLES IN SEASON GROWN, PACKED AND SHIPPED BY J. (BUD) VUKASOVICH CO. MAIN OFFICE WATSONVILLE, CALIF."

CHARGE: 402(a)(2)(B)—when shipped, the lettuce contained a pesticide chemical, namely, DDT, which was unsafe within the meaning of 408(a) since the quantity of such pesticide chemical on the article was not within the limits of the tolerance prescribed by regulations.

PLEA: Nolo contendere.

DISPOSITION: 3-25-63. \$500 fine.

28966. Canned green beans. (F.D.C. No. 43206. S. Nos. 25-983 P, 25-987 P, 26-396 P.)

INFORMATION FILED: 8-3-59, amended information 4-21-60, W. Dist. Wis., against Sampson Canning Co., a corporation, Wisconsin Rapids, Wis.

SHIPPED: Between 8-16-57 and 8-14-58, from Wisconsin to Minnesota and Iowa.

LABEL IN PART: (Can) "Contents 15½ oz. Avoir. Sampson's Cut Green Beans Packed by Sampson Canning Co. Wisconsin Rapids, Wis." and "Contents 15½ oz. Avoir. Mayflower Cut Green Beans Distributed by Consolidated Food Processors Inc. Marshall Canning Division, Hampton, Iowa; Sugar Land, Texas."

CHARGE: 403(h)(1)—when shipped, the article fell below the standard of quality for canned green beans, since the deseeded pods of the article contained more than 0.15 percent by weight of fibrous material, and its label failed to bear a statement that it fell below such standards.

PLEA: Guilty.

DISPOSITION: 4-21-60. \$300 fine.

28967. Dried pinto beans. (F.D.C. No. 48740. S. No. 22-959 V.)

QUANTITY: 150 100-lb. bags, at El Paso, Tex.

SHIPPED: 3-9-63, from Dove Creek, Colo., by Romer Mercantile & Grain Co.

LABEL IN PART: (Bag) "Blue Mountain Recleaned Pinto Beans Packed by Romer Merc. & Grain Co. Dove Creek, Colo."

LIBELED: 4-5-63, W. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 6-11-63. Default—delivered to a Government institution for use as animal feed.

28968. Dried pinto beans. (F.D.C. No. 48862. S. No. 22-673 V.)

QUANTITY: 576 100-lb. bags, at Mountainair, N. Mex.

SHIPPED: Between 3-12-63 and 3-29-63, from Fruita, Colo., by Osborn Bean & Elevator Co.

LABEL IN PART: (Bag) "Recleaned Pinto Beans Packed by Osborn Bean & Elevator Co. Fruita, Colorado."

LIBELED: 4-26-63, Dist. N. Mex.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—packed and held under insanitary conditions.

DISPOSITION: 6-13-63. Consent—claimed by Max Osborn, t/a Osborn Bean & Elevator Co. Reconditioned and segregated; 350 lbs. converted into animal feed.

28969. Sauerkraut, dill pickles, and sweet gherkins. (F.D.C. No. 47318. S. Nos. 65-507 P, 23-301 T, 30-111 T, 30-115 T, 51-543 T, 51-545 T.)

INDICTMENT RETURNED: 3-7-63, Dist. Utah, against Storey Food Products Co., Inc., Ogden, Utah, and Frank D. Storey, vice president and plant manager.

SHIPPED: Between 8-18-59 and 9-1-61, from Ogden, Utah, to Pocatello and Boise, Idaho; Riverside, Calif.; and Denver, Colo.

LABEL IN PART: (Cans) "STOREY'S BIG S NET WEIGHT 6 LBS. 12 OZS. CROSS CUT DILL PICKLES STOREY FOOD PRODUCTS CO., OGDEN, UTAH," "DEL HAVEN BRAND SAUERKRAUT NET WEIGHT 6 LB. 3 OZ. PACKED FOR FEDERATED FOODS, INC. SAN FRANCISCO, CALIF. CHICAGO, ILL.," "STOREY'S BIG S CONTENTS 105 OZS. SWEET MIDGET GHERKINS STOREY FOOD PRODUCTS CO., OGDEN, UTAH," and "BIG S NORTHERN LONG SHRED SAUERKRAUT CONTENTS 1 LB. [or "6 LB. 3 OZ."] STOREY FOOD PRODUCTS COMPANY GROWER-PACKERS DISTRIBUTORS OGDEN, UTAH."

CHARGE: 402(a)(3)—contained insects, insect fragments, maggots, aphids, thrips, mites, feather barbules, animal hairs, and maggot mouth hooks; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 5-21-63. Corporation—\$3,750 fine, of which \$3,000 was suspended; individual—\$2,500 fine, of which \$2,000 was suspended, and probation for 2 years.

28970. Dehydrated potatoes. (F.D.C. No. 48698. S. Nos. 22-499/500 V.)

QUANTITY: 317 50-lb. bags, at Kaysville, Utah.

SHIPPED: Prior to 10-30-62, from Breda, Holland.

LIBELED: 2-11-63, Dist. Utah.

CHARGE: 402(a)(3)—contained rodent hairs and insect fragments while held for sale.

DISPOSITION: 8-20-63. Consent—claimed by Nibb-It Corp. of America for export to the original shipper.

28971. Onion flakes. (F.D.C. No. 47969. S. No. 74-428 T.)

QUANTITY: 195 18-lb. cases, at New York, N.Y.

SHIPPED: 5-24-61, from Israel.

LIBELED: 8-20-62, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained insects and insect larvae, pupae, and fragments while held for sale.

DISPOSITION: 10-11-62. Consent—claimed by Catz American Co., Inc., and destroyed after an unsuccessful attempt at reconditioning.

TOMATOES AND TOMATO PRODUCTS

28972. Canned tomatoes. (F.D.C. No. 48480. S. No. 36-831 V.)

QUANTITY: 698 cases, each containing 24 1-lb. cans, at Selma, Ala.

SHIPPED: 7-2-62, from Okeechobee, Fla., by Markham Bros. & Co.

LABEL IN PART: (Can) "Oak Hill Tomatoes * * * Packed * * * by Markham Bros. and Company Main Office Okeechobee, Florida."

LIBELED: 12-11-62, S. Dist. Ala.

CHARGE: 403(h)(1)—when shipped, the article fell below the standard of quality for canned tomatoes, since the drained weight of the contents of the container was less than 50 percent of the weight of the water required to fill the container, and its label failed to bear a statement that it fell below such standard.

DISPOSITION: 5-1-63. Consent—claimed by Markham Bros. & Co., and released under bond for relabeling.

28973. Canned tomatoes. (F.D.C. No. 48829. S. No. 59-036 V.)

QUANTITY: 57 cases, each containing 24 1-lb. 12-oz. cans, at Philadelphia, Pa.

SHIPPED: On unknown date, by an unknown shipper.

LABEL IN PART: (Can) "JD Garden Gem Tomatoes * * * Distributed By J. T. Harrison & Associates Easton, Maryland."

RESULTS OF INVESTIGATION: The articles were identified as having been packed by the Defender Packing Co., Trappe, Md.

LIBELED: 3-28-63, E. Dist. Pa.

CHARGE: 403(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 7-10-63. Default—destruction.

28974. Canned tomato paste. (F.D.C. No. 48974. S. Nos. 67-841/2 V.)

QUANTITY: 118 cases, each containing 48 6-oz. cans, and 9 cases, each containing 96 6-oz. cans, at Greenville, S.C.

SHIPPED: 4-1-61, from Fullerton, Calif.

LIBELED: On or about 6-3-63, W. Dist. S.C.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 7-2-63. Consent—destruction.

28975. Tomato puree. (F.D.C. No. 48441. S. No. 2-381 V.)

QUANTITY: 175 cases, each containing 6 6-lb. 9-oz. cans, at Atlanta, Ga.

SHIPPED: 9-11-62, from Escalon, Calif.

RESULTS OF INVESTIGATION: Examination showed that the article was undergoing chemical decomposition.

LIBELED: 12-27-62, N. Dist. Ga.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 2-5-63. Default—destruction.

28976. Pizza sauce (tomato product). (F.D.C. No. 48972. S. No. 83-124 V.)

QUANTITY: 47 cases, each containing 6 6-lb. 8-oz. cans, at Port Chester, N.Y.

SHIPPED: 3-7-63, from Swedesboro, N.J., by PMC Canning Co., Inc.

LABEL IN PART: (Can) "Carmelita Brand Prepared Pizza Sauce Italian Style * * * Packed for * * * Joseph Delfino & Sons Port Chester N.Y."

LIBELED: On or about 6-4-63, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 6-26-63. Default—destruction.

28977. Pizza sauce (tomato product). (F.D.C. No. 48976. S. No. 65-974 V.)

QUANTITY: 95 cases, each containing 6 6-lb. 9-oz. cans, at Long Island City, N.Y.

SHIPPED: 10-16-62, from Cologne, N.J., by Ariston Canning Co., Inc.

LABEL IN PART: "Jersey Delight Brand Pizza Sauce * * * Packed by Ariston Canning Co. Cologne, N.J."

LIBELED: 5-28-63, E. Dist. N.Y.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 6-21-63. Default—destruction.

NUTS AND NUT PRODUCT

28978. Unshelled brazil nuts. (F.D.C. No. 48419. S. No. 3-017 V.)

QUANTITY: 88 cases, each containing 12 2-lb. bags, at Raleigh, N.C.

SHIPPED: 11-21-62, from Chico, Calif., by Continental Nut Co.

LABEL IN PART: (Bag) "Contents 2 Lbs. Net * * * Red Ribbon Selected Brazil Nuts Packed by Continental Nut Co. Chico, Calif."

LIBELED: 1-7-63, E. Dist. N.C.

CHARGE: 402(a)(3)—contained shriveled, rancid, bitter, gummy and moldy nuts, and empty shells when shipped.

DISPOSITION: 3-8-63. Consent—claimed by Continental Nut Co., Chico, Calif. Segregated; 101 lbs. destroyed.

28979. Shelled cashews. (F.D.C. No. 48511. S. No. 49-748 V.)

QUANTITY: 24 30-lb. ctns., at Chico, Calif.

SHIPPED: 8-3-62, from New York, N.Y.

RESULTS OF INVESTIGATION: The article was a commingled lot, a portion of which was shipped in 25-lb. cans from New York, N.Y., to California, and then delivered to the dealer who reconditioned the contents, mixed them with other nuts on hand, and repacked the entire lot into 30-lb. cartons.

LIBELED: 1-8-63, N. Dist. Calif.

CHARGE: 402(a)(3)—contained insect larvae, insect fragments, insect parts, and insect excreta while held for sale.

DISPOSITION: 2-8-63. Default—destruction.

28980. Shelled Spanish peanuts. (F.D.C. No. 48748. S. No. 28-176 V.)

QUANTITY: 160 125-lb. bags, at Omaha, Nebr., in possession of Omaha Bakers Supply Co.

SHIPPED: 11-15-62, from Denison, Tex.

LIBELED: 4-15-63, Dist. Nebr.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-24-63. Consent—claimed by Omaha Bakers Supply Co. Segregated; 61 bags destroyed.

28981. Unshelled peanuts. (F.D.C. No. 48711. S. No. 28-631 V.)

QUANTITY: 9 100-lb. bags, at Grand Island, Nebr., in possession of Brown Fruit Co.

SHIPPED: 10-25-62, from Franklin, Va.

LIBELED: 2-20-63, Dist. Nebr.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 3-11-63. Consent—destruction.

28982. Unshelled peanuts. (F.D.C. No. 49024. S. No. 402 X.)

QUANTITY: 21 50-lb. bags at Fort Valley, Ga.

SHIPPED: 4-16-63, from Chadbourn, N.C.

LIBELED: 6-27-63, M. Dist. Ga.

CHARGE: 402(a)(3)—contained rodent urine while held for sale.

DISPOSITION: 7-17-63. Consent—claimed by H. V. Kell Co., Inc., for conversion into animal feed.

28983. Shelled pecans. (F.D.C. No. 49002. S. Nos. 71-581/4 V.)

QUANTITY: 73 30-lb. cases, 22 25-lb. cases, and 146 5-lb. cases, at Knoxville, Tenn.

SHIPPED: Between 12-7-62 and 12-12-62, from Albany, Ga., and elsewhere outside the State of Tennessee.

RESULTS OF INVESTIGATION: The article was a commingled lot which had been shipped in bulk and subsequently repacked by the dealer.

LIBELED: 6-11-63, E. Dist. Tenn.

CHARGE: 402(a)(3)—contained *E. coli* while held for sale.

DISPOSITION: 8-21-63. Default—destruction.

28984. Ground pecans. (F.D.C. No. 48971. S. No. 3-448 V.)

QUANTITY: 64 cases, each containing 12 bags, at Landover, Md.

SHIPPED: 1-10-62, from St. Paul, Minn., by Fisher Nut Co.

LABEL IN PART: (Bag) "Fisher's Fine Ground Pecans Approx. 1½ Cups * * * Fisher Nut Company St. Paul, Minnesota."

LIBELED: On or about 5-16-63, Dist. Md.

CHARGE: 402(a)(3)—contained pieces of the inner and outer shell, and was bitter, astringent, and gritty when shipped.

DISPOSITION: 7-2-63. Default—destruction.

28985. Shelled pecans (2 seizure actions). (F.D.C. No. 48646, 48824. S. Nos. 3-834 V, 4-624 V.)

QUANTITY: 96 30-lb. cases of midget pieces and 11 30-lb. cases of medium pieces, at Baltimore, Md.

SHIPPED: 2-1-63, from Albany, Ga., by Consolidated Pecan Sales Co., Inc.

LABEL IN PART: (Case) "Selected Pecan Meats * * * Standard Midget [or "Medium"] Pieces * * * Consolidated Pecan Sales Co. Albany, Georgia."

LIBELED: 2-21-63 and 3-27-63, Dist. Md.

CHARGE: 402(a)(3)—contained insects and insect larvae, excreta, and webbing when shipped.

DISPOSITION: 5-16-63. Consent—claimed by Consolidated Pecan Sales Co., Inc. Segregated; 349 lbs. destroyed.

28986. Shelled pecans. (F.D.C. No. 48681. S. No. 49-786 V.)

QUANTITY: 19 30-lb. cases, at San Francisco, Calif.

SHIPPED: 12-8-62, from Yancey, Tex., by D. McCrea & Son, Inc.

LABEL IN PART: (Case) "Medium Pieces Fiesta Brand Fancy Shelled Pecans Packed by D. McCrea & Son, Inc., Yancey, Texas."

LIBELED: 1-22-63, N. Dist. Calif.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 2-28-63. Default—destruction.

28987. Shelled black walnuts. (F.D.C. No. 48714. S. No. 65-024 V.)

QUANTITY: 9 35-lb. cases at Cincinnati, Ohio.

SHIPPED: 1-21-63, from Bolivar, Mo., by Barnes & Sons Shelling Co.

LABEL IN PART: (Case) "Ozark Kernel Hand Picked Pasteurized Black Walnut Kernels Barnes & Son Shelling Co. Bolivar, Mo."

LIBELED: 3-4-63, S. Dist. Ohio.

CHARGE: 402(a)(3)—contained *E. coli* when shipped.

DISPOSITION: 4-19-63. Default—delivered to a public institution for use as animal feed.

28988. Shelled walnuts and filberts. (F.D.C. No. 45588. S. No. 67-543 R.)

QUANTITY: 35 35-lb. ctns. at Fort Worth, Tex.

SHIPPED: 1-14-61, from Dundee, Oreg., by Compton Nut Co., Inc.

LABEL IN PART: (Ctn.) "Quality Oregon Walnut-Filbert Meats Compton Nut Company * * * Dundee, Oregon."

LIBELED: 3-23-61, N. Dist. Tex.

CHARGE: 402(a)(3)—contained *E. coli* when shipped.

DISPOSITION: 6-15-61. Consent—claimed by Ellis Pecan Co., Fort Worth, Tex., and Compton Nut Co., Dundee, Oreg., and denatured for use as animal feed.

28989. Shelled black walnuts. (F.D.C. No. 48662. S. Nos. 28-950/51 V.)

QUANTITY: 5 ctns., containing a total of approximately 135 lbs., at Kansas City, Kans.

SHIPPED: 12-6-62, from Verona, Mo., by Spring River Shelling Co.

LIBELED: 3-5-63, Dist. Kans.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 4-30-63. Default—destruction.

28990. Shelled black walnuts. (F.D.C. No. 47594. S. Nos. 14-360 T, 14-381 T.)

QUANTITY: 100 40-lb. cases of large meats, and 100 40-lb. cases of small meats, at Chicago, Ill.

SHIPPED: 2-1-62, from Chico, Calif., by Donig Co., Inc.

LABEL IN PART: (Case) "Black Walnut Meats . . . grade large [or "grade small"] Donig Co., Inc. San Francisco, Calif."

LIBELED: 5-10-62, N. Dist. Ill.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 5-29-62. Consent—claimed by Donig Co., Inc., and reconditioned.

28991. Shelled mixed nuts. (F.D.C. No. 48789. S. No. 80-741 V.)

QUANTITY: 37 cases, each containing 12 cans, at San Francisco, Calif.

SHIPPED: 4-30-63, from Portland, Oreg., by Johnson Nut Co.

LABEL IN PART: (Can) "Johnson's Home Treat Mixed Nuts * * * 1 Pound Net Weight * * * Johnson Nut Company, Minneapolis, Portland."

RESULTS OF INVESTIGATION: The article was approximately 5.87 percent short weight.

LIBELED: 5-24-63, N. Dist. Calif.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents, since the label statement "1 Pound Net Weight" was inaccurate.

DISPOSITION: 7-12-63. Default—delivered to a charitable institution.

28992. Pinon (pine) nuts. (F.D.C. No. 48450. S. No. 21-442 V.)

QUANTITY: 12 80-lb. bags, at San Francisco, Calif.

SHIPPED: 10-19-62, from Gallup (Gamerco), N. Mex., by Navajo Shopping Center.

LABEL IN PART: (Tag) "Navajo Shopping Center Gamerco, New Mexico."

LIBELED: 11-15-62, N. Dist. Calif.

CHARGE: 402(a)(3)—contained animal excreta pellets when shipped.

DISPOSITION: 4-5-63. Consent—claimed by Desert Sun Co., San Francisco, Calif. Reconditioned; 35 lbs. destroyed.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE

28993. Sta-trim candy bar. (F.D.C. No. 44248. S. No. 61-900 P.)

QUANTITY: 50 ctns., each containing 24 individually wrapped $\frac{3}{4}$ -oz. bars, at San Francisco, Calif.

SHIPPED: 12-1-59, from Yonkers, N.Y., by Sta-Trim Confections, Inc., Div. of American Diet aids Co., Inc.

LABEL IN PART: (Bar) "Sta-trim * * * MILK style CHOCOLATE flavored WITHOUT ALL THE FATTENING CALORIES of ordinary chocolate bars No Sugar added* A Dairy Maid product by Sta-trim Ingredients: Skim and whole milk solids, calcium carbonate, cocoa butter, mannitol, chocolate liquor, lecithin, natural and artificial flavors, .06% saccharin and .016% sodium cyclamate. Saccharin and sodium cyclamate are non-nutritive artificial sweeteners which should be used only by persons who must restrict their intake of ordinary sweets. Approx. Analysis*: Protein 8%, Fat 31%, Available Carbohydrates 14%. Approx. Calories per 100 grams 367—Approx. Calories per bar 76. Sta-Trim Confections, Inc., Yonkers, N.Y. Dist."

RESULTS OF INVESTIGATION: Examination showed the article to be a light brown colored candy bar divided into four equal sections. The article had the odor, taste and appearance of chocolate.

LIBELED: 2-23-60, N. Dist. Calif.; amended libel 10-21-60.

CHARGE: 402(d)—when shipped, the article was a confectionery and it contained saccharin and sodium cyclamate, which are nonnutritive substances; 403(a)—the label statements “Low Calorie,” “Good for you when you diet—Good for you when you want to keep trim,” and “For People Who Want To Keep Trim,” were false and misleading since the article was not low in calories and would not be effective to reduce weight or to keep trim; 403(a)—the label statement “WITHOUT ALL THE FATTENING CALORIES of ordinary chocolate bars” was misleading since the article furnished the consumer a substantial proportion of the fattening calories of ordinary chocolate bars; 403(a)—the label statement “ONLY 9 CALORIES per section” was misleading because the label did not declare that there were 8 small sections and the consumer could not see how many sections there were until the package was opened; 403(a)—the label statement “ONLY 9 CALORIES” in bold large print followed by the words “per section” in light small print was misleading because it created the impression that each bar furnished fewer calories than it did in fact, and this misleading impression was not corrected by the statement in the fine print portion of the label “Approx. Calories per bar 76”; and 403(g)(1)—the article failed to conform to the definition and standard of identity for milk chocolate.

DISPOSITION: On or about 3-17-60, Sta-Trim Confections, Inc., claimed the article and denied that the article was misbranded or adulterated. On 10-11-60, the claimant filed a motion for partial summary judgment in the claimant's favor on the adulteration charge of the libel. On 11-9-60, the Government moved for summary judgment in its favor. On 2-6-61, both motions for summary judgment were argued, and on 4-14-61, the court granted the defendant's motion, denied the Government's motion, and rendered the following opinion:

SWEIGERT, *District Judge*: “This is a libel filed by the United States praying seizure and condemnation in accordance with the Federal Food, Drug and Cosmetic Act, 21 U.S.C. Sections 301 et seq., of 1200 candy bars, more or less, manufactured by Sta-Trim Confections, Inc., a New York corporation, and shipped in interstate commerce to San Francisco, California.

“The libel, as amended on October 21, 1960, alleges that these candy bars were adulterated when introduced into and while in interstate commerce within the meaning of 21 U.S.C. Section 342(d) in that they are confectionery containing non-nutritive substances. Further, that the candy bars were misbranded when introduced and while in interstate commerce within the meaning of 21 U.S.C. Section 343(a).

“Sta-Trim Confections, Inc., has intervened, claiming the articles seized, and moves for a partial summary judgment on the ground that libelant's allegations of adulteration, under 21 U.S.C. Section 342(d), are insufficient as a matter of law, and that there is no genuine issue of fact on that issue.

“Libelant has also moved for summary judgment on both charges, adulteration and misbranding.

“On the issue of adulteration, the amended libel alleges that the Sta-Trim bars are adulterated within the meaning of 21 U.S.C. Section 342(d), in that they are confectionery and contain saccharin and sodium cyclamate, which are alleged to be non-nutritive substances.

“This section reads in pertinent part as follows: ‘A food shall be deemed to be adulterated . . . (d) If it is confectionery, and it bears or contains any alcohol or non-nutritive article or substance except authorized coloring, harmless flavoring . . .’

"Claimant contends that its candy bars are not confectionery, but special dietary foods within the meaning of 21 U.S.C. Section 343(j). That section reads as follows: 'A food shall be deemed to be misbranded . . . (j) If it purports to be . . . for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the Secretary determines to be, and by regulations prescribes as, necessary in order fully to inform purchasers as to its value for such uses.'

"Webster's New International Dictionary, (2nd Ed. 1949), defines confectionery as 'sweetmeats in general; things prepared and sold by a confectioner; confections; candies.' The Court has examined samples of the seized items, which are part of the record, and is satisfied that these products conform to this definition as to odor, appearance and taste.

"Claimant's promotional literature, attached to Inspector Forbragd's affidavit, characterizes its own product as 'candy . . . that tastes like and looks like the real thing', Ex. 4; 'low calorie candy that really tastes delicious', Ex. 4; 'low calorie candies that taste like, are priced like and sell like regular chocolate,' Ex. 5. The name of the manufacturer itself is Sta-Trim Confections, Inc.

"The fact, asserted by claimant, that its products are intended for a special dietary purpose, does not necessarily exclude their classification as confectionery. The two classes of foods, confectionery and special dietary foods, are not treated by the statute as separate and distinct. While a special provision exists in the code dealing with foods for special dietary purposes, 21 U.S.C. Section 343(j), it does not appear in the statute or in the regulations promulgated thereunder that any immunity from the other provisions of the law was intended for special dietary foods.

"The regulations declare to the contrary. 21 C.F.R. 1.11(b) states: 'No provision of any regulation under Section 403(j) of the act [21 U.S.C. Section 343(j)] shall be construed as exempting any food from any other provision of the act . . .'

"With specific reference to special dietary foods containing saccharin, the regulations state, 21 C.F.R. 125.7: . . . 'The provisions of this section shall not be construed as . . . relieving any food from compliance with any requirement of Sections 402 (b) or (d), 403(g), or other provisions of the act.' [21 U.S.C. Sections 342 (b) or (d), 343(g)].

"The Court concludes that Sta-Trim Candy Bars are confectionery within the meaning of Section 342(d).

"There remains the question whether, as confectionery, this product is adulterated within the meaning of the same section in that it contains saccharin and sodium cyclamate, which are alleged to be non-nutritive substances.

"It will be noted that the statute, Section 342(d), refers to non-nutritive substances 'except authorized coloring or harmless flavoring.'

"The libel does not negate the possibility that saccharin and sodium cyclamate, although non-nutritive, are harmless flavorings. We are of the opinion that, unless such exception is negated, the libel, for that reason, fails to state a case of adulteration under the section.

"The Affidavit of Osborn, filed by the libelant, alleges that 'in industry, in government, and among consumers, and in standard reference books, sugar and sugar substitutes such as saccharin and sodium cyclamate are commonly understood to be, and are universally recognized as sweeteners or sweetening agents and not flavoring substances.'

"The Affidavit of Okin, filed by claimant, does not specifically allege that its products are either sweetening agents or flavoring agents. It does, however, state that 'saccharin and sodium cyclamate have been added to the product to sweeten it without adding the calories contained in ordinary sugar,' and the same affidavit quotes the legend prominently displayed on the label of its candy bars: 'saccharin and sodium cyclamate are non-nutritive artificial sweeteners . . .'

"Only in claimant's briefs, which do not constitute part of the record, is there an attempt to urge that the candy bars contain harmless flavorings.

"While the libel, therefore, does not negate the possibility that these substances may be harmless flavorings, and may be considered defective in this regard, libelant's affidavit, which has not been controverted by claimant's affidavit, draws the distinction between flavoring and sweetening agents, and indicates that saccharin and sodium cyclamate are sweetenings and *not*

flavorings. We assume, therefore, that the libel can be amended to allege the fact in accordance with the affidavit.

"Libelant has not, however, alleged that, even as sweetenings, these substances are harmful, and, absent any such allegation, we shall assume that they are harmless.

"The further question is therefore presented whether Section 342(d) is to be construed as prohibiting the use in confectionery of non-nutritive substances which are not harmful or inedible.

"When Congress enacted the Food and Drug Act in 1906, its obvious purpose was to eliminate from confectionery certain non-nutritive substances which were poisonous or deleterious ingredients. Section 7 of the Act, 21 U.S.C. Section 8, predecessor to Section 342(d) read as follows: 'That for purposes of this Act an article shall be deemed to be adulterated . . . In the case of confectionery: If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, *or other ingredient deleterious or detrimental to health*, or any vinous, malt or spiritous liquor or compound or narcotic drug.' [Italic added.]

"When Congress enacted the present law in 1938, the section was broadened to omit references of specific harmful substances and there was substituted the general phrase, 'non-nutritive substance,' with certain specific exceptions in regard to authorized coloring and harmless flavoring.

"At the Senate hearings upon the new section, the then Chief of the Food and Drug Administration, W. G. Campbell, explained: 'That particular phrase "or non-nutritive substance" was intended to take care of the candy-carrying trinkets of the sort that have been in the recent past extremely popular.' Dunn, *Federal Food, Drug and Cosmetic Act, A Statement of Its Legislative Record*, 1065 (1938).

"The Senate Committee on Commerce reported on the bill as follows, quoted in Dunn, *supra*, 680, 691: 'Forbids traffic in confectionery containing metallic trinkets and other inedible substances which have been found to be a menace to the welfare of children.'

"In 6 Law and Contemporary Problems, 27-28 (1939), it is said: 'The old act listed certain non-nutritive substances and alcohol, the presence of which would render the product adulterated. This list was inadequate, especially in that it failed to cover the practice of placing tiny toys and trinkets in children's candy, which may cause injury or death when swallowed.'

"It appears, therefore, that Section 342(d), when read in light of its predecessor Section 7 of the 1906 Act, embodies a legislative purpose to prohibit non-nutritive ingredients which are either harmful or inedible.

"The problem of adulteration in confectionery is different from that of other foods. Other foods may undergo certain types of treatment in processing and packing, exposing them to the risk of adulteration through the addition of foreign matter. Confectionery, on the other hand, by definition is an incorporation of additive substances, especially harmless colors and flavors. The addition of substances to make a confection is, therefore, a legitimate means of manufacture. Wiley, *Foods and Their Adulteration*, 483 (1907).

"As further stated by Wiley, *supra*, confectionery is not a natural product, and the incorporation of harmless additives should not per se render the confection adulterated. Of the substances which are commonly added to confectionery, e.g., flavorings, sweetenings, colorings, nuts, fruits, etc., some are nutritive and others non-nutritive. It is plain, however, that the nutritive properties of confectionery, while important, are at least not as highly prized by the public as its flavor, general palatability, and attractiveness. Wiley, *supra*.

"The use of artificial sugars, such as saccharin and sodium cyclamate in the manufacture of a confection may possibly give rise to questions relating to a statutory standard of identity, Section 343(g), or problems of misbranding, Section 343. But, as far as adulteration, within the meaning of Section 342(d) is concerned, we hold that the statutory phrase, 'non-nutritive substances,' means only non-nutritive substances that are harmful or inedible.

"If Section 342(d) were to be read to prohibit the addition of harmless non-nutritive substances, such as saccharin and sodium cyclamate, into confectionery, this section would conflict with Section 343(j) which permits the sale of special dietary foods, when properly labeled, including foods containing

saccharin and sodium cyclamate. Interpretations that result in such conflicts should be avoided as far as reasonably possible.

"It is, therefore, our conclusion that harmless, edible saccharin and sodium cyclamate are not non-nutritive substances within the meaning of Section 342(d) and that, therefore, claimant's motion for summary judgment on the adulteration issue should be granted.

"We turn now to libelant's second contention that these candy bars have been misbranded within the meaning of Sections 343(a) and 343(g) (1). Such sections read as follows :

'Section 343. Misbranded food—

A food shall be deemed to be misbranded—

(a) If its labeling is false or misleading in any particular.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations . . . , unless (1) it conforms to such definition and standard . . . '

"The amended libel alleges that claimant's products when introduced into and while in interstate commerce were misbranded within the meaning of 21 U.S.C. Section 343(a) in that the label statements, 'Low Calorie,' 'Good for you when you diet—Good for you when you want to keep trim,' and 'For People Who Want to Keep Trim,' are false and misleading, since the article is not low in calories and will not be effective to reduce weight or keep trim; FURTHER, that the article is misbranded within the meaning of the same section in that the label statement 'WITHOUT ALL THE FATTENING CALORIES of ordinary chocolate bars' is misleading, since the article furnishes the consumer a substantial proportion of the fattening calories of ordinary chocolate bars; FURTHER, that the article is misbranded within the meaning of the same section in that the label statement 'ONLY 9 CALORIES' in bold language followed by the words 'per section' in light small print is misleading, because it creates the impression that each bar furnishes fewer calories than it does in fact, which impression is not corrected by the statement in the fine print portion of the label 'Approx. Calories per bar 76.' An examination of the affidavits indicate that these claims, denied by defendant, give rise to a genuine issue of fact which should not be resolved upon a motion for summary judgment.

"Finally, the amended libel alleges that the article is misbranded within the meaning of 21 U.S.C. Section 343(g) (1), quoted supra, in that it purports to be and is represented as milk chocolate, a food for which a definition and standard of identity has been prescribed by 21 C.F.R. Section 14.7, as provided by 21 U.S.C. Section 341, and it fails to conform to such definition and standard.

"In support of this allegation, libelant has submitted the affidavit of Osborn, Senior Chemist, Food Division, Bureau of Biological and Physical Sciences, in Washington, D.C., to the effect that saccharin and sodium cyclamate are not permitted ingredients under the definition and standard of identity for milk chocolate.

"But, claimant does not allege by affidavit or otherwise that its product is milk chocolate, nor does the statute require it to be. The gist of the charged misbranding under this section is that the article 'purports' to be or is represented as milk chocolate.

"This question, like others previously discussed, depends largely upon a determination of what an ordinary purchaser of this type of product would believe it to be from the label and packaging statements and in this respect a question of fact is raised which may not be resolved upon a motion for summary judgment.

"We cannot, as a matter of law, state whether this product 'purports' to be milk chocolate, and believe that, in the absence of evidence on this point, libelant's motion for summary judgment on this issue should be denied.

"We conclude that plaintiff's motion for summary judgment should be denied and that defendant's motion for partial summary judgment should be granted.

"Defendant, as prevailing party herein, will prepare an order in accordance with this opinion and in conformity with the Rules of this Court."

Thereafter the claimant moved to have the case removed to the Eastern District of New York for trial. On 5-2-61, the Government moved for a rehearing of the court's ruling which granted the claimant's motion for partial summary judgment and denied the Government's motion for summary judgment on the adulteration charge. On 5-25-61, both the motion for rehearing and the motion for removal were heard. On 7-6-61, the court rendered the following opinion denying both motions :

SWEIGERT, *District Judge*: "On April 24, 1961, this Court issued its order denying libelant's motion for summary judgment on the issues of adulteration and misbranding, and granting claimant's motion for partial summary judgment on the single issue of adulteration.

"The order was filed pursuant to our memorandum opinion of April 4, 1961, wherein we concluded that the statutory phrase, 'non-nutritive substance,' contained in 21 U.S.C. Section 342(d), means only a non-nutritive substance which is harmful or inedible, and that the statute was not intended to ban the use of such harmless, non-nutritive substances as saccharin and sodium cyclamate.

"In granting libelant's motion for a rehearing, the Court has considered further oral argument and further briefs.

"Upon re-hearing, libelant argues, among other points, that our previous ruling would adversely affect the administration of the Food, Drug and Cosmetic Act, because the government would be powerless to eliminate from confectionery those substances, called economic adulterants, which, although harmless non-nutritives, are deceptively used as cheap fillers to increase bulk and weight at the expense of quality.

"In the course of our reconsideration of our previous construction of Sec. 342(d), U.S.C. Title 18, we have examined two cases dealing with its predecessor Section, Sec. 7 of the 1906 Act, which read as follows :

"That for the purposes of this act an article shall be deemed to be adulterated . . .

In the case of confectionery :

If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient "deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound or narcotic drug." "

"In *French Silver Dragee Co. v. United States*, 179 F. 824 (2d Cir. 1910), involving a review of a conviction under that section for interstate shipment of silver-coated confectionery, the Second Circuit noted the purpose of the pure food act as two-fold: (1) To protect purchasers of food from being deceived by having inferior and different articles passed off upon him in place of those which he desired to obtain, and (2) To protect him from injury by prohibiting the addition to foods of foreign substances poisonous or deleterious to health. (at 825).

"In construing the section, the Court noted that the enumerated substances, terra alba, barytes and talc, although harmful, were well known economic adulterants. Chrome yellow, the Court noted, was a poisonous coloring.

"The issue before the Court was whether the lower Court had correctly interpreted the statutory phrase 'or other mineral substance' as including all mineral substances whatsoever, e.g., salt, sulphur, and baking soda, commonly used in the manufacture of confectionery, and silver, a harmless non-nutritive substance, used, not like an economic adulterant, to deceive, but merely to attract attention.

"The Court said :

"But the product in which the salt, sulphur, baking soda, or silver was used would not be unhealthful, nor would there be any element of deceit present. The provision so construed would arbitrarily prohibit the use of all mineral substances in confectionery, would accomplish thereby none of the purposes of the Act, and would apply a different standard in the case of confectionery than in the case of food or drugs. Unless the language of the statute imperatively requires such construction, it should not be adopted by the Courts.' (at 827).

"In *United States v. B. C. Boeckel*, 221 F. 885 (1st Cir. 1915), the Court, interpreting the same section, in a case involving the presence of talc, held that the specifically enumerated substances—terra alba, barytes, talc and

chrome yellow, and vinous, malt and spirituous liquors, rendered confectionery adulterated.

"It should be noted, however, that in reaching its conclusion the Court observed that Congress, knowing that the first three substances, although harmless, were commonly used as adulterants in confectionery to increase its weight and cheapen its quality, and that chrome yellow is an active poison, and that vinous, malt and spirituous liquors lead to pauperism and crime, saw fit to ban all of these named substances from confectionery, regardless of whether the quantity contained in any particular confectionery was such as to produce those results.

"It was because of the nature of the named substances, and their tendency to either deceive or to injure, that the Court recognized the intent of Congress to ban the enumerated substances entirely from confections and upheld that Congressional intent as reasonably related to the purposes of the Food and Drug Act.

"With respect to such unspecified substances as might fall within the general phrase 'other mineral substances,' the Court cited with approval the earlier *Silver Dragee* case for its holding that the government must establish that any such mineral is either calculated to deceive or to injure the public.

"With these interpretations of the predecessor section in mind, we do not believe that, when Congress amended the law by omitting reference to specific substances and by substituting the general phrase 'non-nutritive substances' (except 'authorized coloring, harmless flavoring, etc.'), it intended to so change and broaden the act as to prohibit for the first time substances which are neither harmful nor in the category of deceptive economic adulterants.

"The question is important to this case because the substances here involved, saccharin and sodium cyclamate, are admittedly harmless, and so far as the record herein is concerned, there is nothing to indicate that they are the kind of substances which are or could be commonly used for the purposes of economic deceit—any more than the non-nutritive, decorative silver, involved in the *French Silver Dragee* case could be so used. Indeed, the government's only contention is that they are 'harmless sweetenings' which, defendant contends, are essentially the same as 'harmless flavorings' expressly excepted even by Sec. 342(d) itself.

"Reference to the dictionary to discover the distinction, if any, between 'flavorings' and 'sweetenings' leads the Court to believe that a sweetening ('agreeable to the sense of taste; having a *flavor* like sugar; especially containing or due to sugar in some form', Funk & Wagnalls New College Standard Dictionary), is also and necessarily a flavor or flavoring ('a substance, as an essence or extract, for giving a flavor to anything', a flavor being 'the quality of anything as affecting the senses of taste or smell; the characteristic taste of a thing, especially if pleasant.'—Id.)

"Although we are of the view that a sweetening is also and necessarily a flavoring, i.e., a sweetish, sugarish flavoring, we have not rested our ruling on that ground for the reason that the government has placed in the file an affidavit of one Dr. Osborn to the effect that when a natural or artificial sweetener is added to food, the food is spoken of as sweetened to taste, not as flavored to taste.

"Nevertheless, saccharin and sodium cyclamate, whether sweetenings, flavorings or both, are, so far as this record is concerned, neither harmful nor deceptive to the public. The Court is of the opinion that, either the Congress did not intend to proscribe them from confectionery when it used the general phrase 'non-nutritive substances' or that the Congress believed and intended, as this Court believes, that such harmless sweetenings would be exempted by the exceptions of 'harmless flavorings.'

"We have examined the legislative history leading to the 1938 amendment of Sec. 7 of the 1906 Act and the recasting of it to the form of present Sec. 342(d) of Title 21.

"That history indicates that the primary purpose of the change was to get at the practice of embedding non-nutritive articles or substances, like trinkets which, although potentially harmful and inedible, would not clearly fall within the provisions of Sec. 342(a) (1), dealing with substances injurious to health, or within Sec. 342(b), dealing with substances usable as so-called economic adulterants. See, Senate Report on S. 2800, Dunn, *Federal Food, Drug and Cosmetic Act*, 114 (1938); Senate Report on S. 5, Dunn, *supra*, 243; House Re-

port on S. 5, Dunn, *supra*, at 552; Amended Report in the Senate on S. 5, Dunn, *supra*, at 691.

"The then head of the Food and Drug Administration, W. G. Campbell, specifically testified in the Senate hearings on the proposed legislation that the use of the phrase 'non-nutritive substance' was to take care of candy-carrying trinkets. See, Dunn, *supra*, at 1075.

"Libelant contends that, because Section 342(d) expressly excepts 'authorized coloring, harmless flavoring, harmless resinous glaze . . . natural gum and pectin'—that *all* other non-nutritive substances, although neither harmful, inedible nor economically deceptive, are encompassed within the ban of Sec. 342(d) on 'non-nutritive substances.'

"Apart from our view that Congress may well have believed and intended that such harmless substances as saccharin and sodium cyclamate would be exempted by the exception of 'harmless flavorings,' we do not in any event believe that Congress intended to ban their use under the general phrase 'non-nutritive' substance or ban the use of any substance in confectionery, which, tending neither to public injury or deceit, would not be reasonably related to the purposes of the Act.

"It is, therefore, our opinion that the present section carries forward the ban of the previous section on substances injurious to health (like poisonous chrome yellow), as well as the earlier section's ban on deceptively used economic adulterants (like terra alba, barytes and talc). Further, as already noted, the present section was intended to go further to plug up 'one of the serious loopholes of the old law,'—its failure to reach the practice of using in confectionery such harmful articles as metallic trinkets. See, House Report on S. 5, Dunn, *supra*, at 552, 691, 1065.

"A further consideration supports our interpretation of the section.

"Libelant concedes that under Section 343(j), the special provision dealing with foods for special dietary uses, products which contain saccharin and sodium cyclamate, may be legally introduced for interstate shipment if they are for special dietary uses and if they comply with the particular regulations required by that section with respect to labeling. (See, Libelant's Brief, 11-9-60, p. 20.)

"There is no contention that the product here involved is not for special dietary use or that it does not comply with those regulations.

"Libelant's position on this point is that its further regulation issued under Section 343(j) provides that such regulations should not be construed as exempting any food from any other provision of the Act. (Libelant's Brief, 11-9-60, p. 20.)

"The practical effect of the last mentioned regulation, in which the agency assumes to construe the statute, is that a special dietary use product containing saccharin and/or sodium cyclamate, and complying with the labeling provisions of Section 343(j), may be legally introduced into interstate commerce, *unless it happens to be also a confection*. In this latter case, according to the government's interpretation of Section 342(d), it cannot be introduced, even though it is harmless, not a deceptive economic adulterant, and is properly labelled under Section 343(j).

"Such an anomalous, harsh and inexplicable result should be avoided if possible. It is avoided, and effect given to all pertinent sections of the Act, by our construction of Section 342(d).

"Under this construction, the government will be under no greater difficulty in Section 342(d) cases, involving the general phrase 'non-nutritive substance,' than it was in cases under the former section, involving the phrase 'other mineral substances,' wherein the government was obliged to show that the substance was either harmful or usable as an economic adulterant. (See, *French Silver Dragee*, *supra*.)

"In anticipating a refusal to reconsider our former ruling, which was of the type from which an interlocutory appeal would not ordinarily lie, (6 *Moore's Federal Practice*, Par. 56.20[4] p. 2311,) libelant has requested this Court to certify the case as appropriate for an interlocutory appeal under the provisions of 28 U.S.C. Section 1292(b).

"Under that section it is necessary for this Court to include in its opinion certain recitals to the effect that the Court is of the opinion that its order 'involves a controlling question of law as to which there is substantial ground

for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.'

"The section was intended primarily as a means of 'expediting litigation by permitting appellate consideration during the early stage of litigation of legal questions which, if decided in favor of the appellants would end the lawsuit.' *United States v. Woodberry*, 263 F. 2d 784, 787 (9th Cir. 1959).

"This lawsuit would not be ended even if summary judgment were entered in favor of libelant on the issue of adulteration. There still remains the issue of misbranding which involves questions of fact to be tried. The adulteration issue does not present a controlling question of law because both issues are separate and independent of each other. For these reasons, the Court is unable to certify this matter to the appellate court under Section 1292(b).

"There remains claimant's motion to remove to the Eastern District of New York, made pursuant to the provisions of 21 U.S.C. Section 334(a).

"Since a seizure action is a statutory in rem proceeding, the jurisdiction of this Court is based upon the presence of the goods within the district. Accordingly, the general removal provisions of 28 U.S.C. Section 1404 (a) and (b), permitting transfer to any district in which the action could have been brought originally and permitting transfer between divisions of the same district, is inapplicable because seizure actions must be brought where the goods may be found. See: *United States v. 23 Gross Jars of Enca Cream*, 86 F. Supp. 824 (N.D. Ohio 1949).

"Section 334(a) of Title 21, provides for a change of venue in seizure actions under the Food and Drug Act. In certain cases transfer is allowed upon petition of the claimant to a district agreed upon by stipulation between the parties, and, failing this, unless good cause otherwise appears, to a district of reasonable proximity to claimant's principal place of business.

"This privilege is, however, restricted in single seizure actions, such as the present, to misbranding cases. *United States v. 74 Cases . . . C. C. Brand Oysters*, 55 F. Supp. 745 (W.D.S.C. 1944). Removal is not provided by statute for single adulteration libels, and it has been held that transfer may not be authorized where, as here, the single libel charges both adulteration and misbranding. *United States v. 11 Cases of Ido-Phon-Chon*, 94 F. Supp. 925 (D. Ore. 1950), 2 *Kleinfeld & Dunn, Federal Food, Drug and Cosmetic Act*, 178 (1949-50); see, also, *Clinton Foods, Inc. v. United States*, 188 F. 2d 289 (4th Cir. 1951).

"Claimant has taken the position that this Court's order, granting partial summary judgment in claimant's favor on the issue of adulteration removes that issue from the case and that the libel should be considered at this juncture as though the adulteration issue had never been pleaded. (Claimant's Reply Brief, 2.)

"We cannot agree. The issue of adulteration, though the subject of an interlocutory summary adjudication, has not been removed from the case. It remains part of libelant's case and will be reviewable on appeal from final judgment.

"In response to claimant's suggestion that the government, as libelant in this action, could effectively read Section 334(a) entirely out of the statute by pleading an adulteration charge in each case, even though frivolous or insufficient in law, we may state that libelant's charge of adulteration in this case is bona fide and not plainly without merit.

"It is, therefore, the opinion of the Court that claimant's motion to remove to the Eastern District of New York should be denied.

"Another matter yet remains. In our former memorandum opinion, we noted that libelant had failed in its libel to negate the possibility that saccharin and sodium cyclamate, although non-nutritive, are harmless flavorings within the meaning of the statutory exception relating such substances. We expressed the view that, unless such exception is negated, the libel, for that reason, fails to state a case of adulteration under the section.

"Upon the authorities, however, (*McKelvey v. United States*, 260 U.S. 353 (1922); *United States v. Safeway Stores, Inc.*, 252 F. 2d 99, 101 (9th Cir. 1958); and *Bowles v. Wheeler*, 152 F. 2d 34, 41 (9th Cir. 1945), cert. den. 326, S. 775 (1945), we now conclude that the libel need not negate the exception relating to harmless flavorings.

"Claimants will prepare an order in accordance with this memorandum opinion and in conformity with the rules of this Court, denying libelant's motion to reconsider.

"Libelant will prepare an order in accordance with this memorandum opinion and in conformity with the Rules of this Court, denying claimant's motion to remove."

On 7-12-61, the court rendered a supplemental memorandum opinion which indicated the court's willingness to certify for the purpose of an interlocutory appeal under section 1292(b) of Title 28, United States Code, that its ruling on the adulteration issue involved a controlling question of law as to which there was substantial ground for difference of opinion. However, on 12-8-61, in view of the strong policy against piecemeal appeals, and because the remaining issue of misbranding might be tried in several days, the court set its supplemental opinion aside and ordered that the case proceed to trial forthwith.

On 3-16-62, a consent decree of condemnation and destruction was filed, claimant moving that a decree, as prayed for in the libel with respect to the misbranding charges, be entered condemning the article under seizure, and the Government without waiving its right of appealing the court's order granting partial summary judgment, offering no objection. On 3-16-62, a partial summary judgment in favor of the claimant on the adulteration charge was also filed. On the same date the district court filed a stay of the order of destruction, thereby directing the U.S. marshal not to destroy the article under seizure until the Government had exhausted all appeal rights in this case. On 5-14-62, the Government appealed the court's partial summary judgment in favor of the claimant on the adulteration charge. On 1-14-63, the United States Court of Appeals for the 9th Circuit rendered the following opinion (313 F. 2d 219) :

PER CURIAM: "In this case the United States filed a libel against the above-mentioned Candy Bars alleging that the candy bars were (a) adulterated and (b) misbranded in violation of the Federal Food, Drug, and Cosmetic Act. Following proceedings in the court below, the court adjudged that the candy bars were not adulterated within the meaning of the applicable statute but adjudged that the same were misbranded and ordered them condemned and destroyed for this reason. United States has appealed from that portion of the judgment of the court below which found the candy bars not adulterated. No other appeal has been taken and the decree of condemnation ordering destruction of the candy bars because misbranded has become final. Appellee asserts that appellant's appeal is moot and should be dismissed.

"We are of the opinion that under the circumstances stated the matter determined against the United States is immaterial or moot, and that the motion to dismiss the Government's appeal should be granted.

"IT IS THEREFORE ORDERED AND ADJUDGED that the appeal of the United States be, and the same is hereby dismissed as moot. So much of the judgment below as dealt with the issue of adulteration is vacated and set aside, and the same is and shall be without further force and effect. *Duke Power Company v. Greenwood County*, 299 U.S. 259, 267, and cases cited in *United States v. Munsingwear*, 340 U.S. 36, 39, footnote 2. See also *Benz v. Compania Naviera Hidalgo S.A.*, 9 cir., 205 F. 2d 944, 947."

28994. Bio-C-Complex tablets. (F.D.C. No. 48328. S. No. 34-101 V.)

QUANTITY: 240 100-tablet btls., at Minneapolis, Minn.

SHIPPED: 5-16-61, from Worcester, Mass., by Brewer & Co., Inc.

LABEL IN PART: (Btl.) "Cayol * * * Natural & Organic Bio-C-Complex Vitamin C . . . 100 mg. Rutin . . . 50 mg. Citrus Bioflavonoids . . . 60 mg. Distributed by Cayol Foods * * * Minneapolis, Minn. * * * Directions * * * Indications—As A Dietary Supplement."

LIBELED: 10-22-62, Dist. Minn.

CHARGE: 403(j)—when shipped, the article was represented as a food for special dietary use by reason of presence therein of vitamin C and its label failed to bear, as required by regulations, a statement of the proportion of the minimum daily requirement for vitamin C supplied by such food when consumed in a specified quantity during a period of one day.

DISPOSITION: 11-14-62. Consent—claimed by Bessie Gold, t/a Cayol Foods, Minneapolis, Minn., and relabeled.

28995. Hematinic tablets. (F.D.C. No. 48382. S. No. 4-954 V.)

QUANTITY: 417 btls. at Baltimore, Md.

SHIPPED: 3-6-62, from Philadelphia, Pa., by Hance Bros. & White Co.

LABEL IN PART: (Btl.) "100 Sugar-Coated Green Continental Hematinic Tablets Recommended as a dietary supplement Each Tablet Contains: * * * Folic Acid 0.3 mg. * * * Sulfate * * * 2035040 Continental Drug Co., Baltimore, Md. Distributors * * * Dose: One to three tablets daily with meals."

LIBELED: 11-26-62, Dist. Md.

CHARGE: 402(a)(2)(C)—when shipped, the article contained a food additive, folic acid, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409.

DISPOSITION: 12-26-62. Default—destruction.

28996. Hemo-Glo tablets. (F.D.C. No. 48057. S. No. 72-976 T.)

QUANTITY: 3 drums, containing a total of about 68,750 tablets, and 83 100-tablet btls., and 37 300-tablet btls., at Venetia, Pa., in possession of Nu-Age Biorganic Products, Inc.

SHIPPED: 5-29-62, from Inwood, Long Island, N.Y., by Barrows Chemical Co., Inc.

LABEL IN PART: (Btl.) "Hemo-Glo A rich natural dietary supplement indicated for iron deficiency anemia combining Iron, B-12, B-Complex, Vitamin C, Bioflavonoids, Liver, enzymes, and herbal extracts from natural sources. Manufactured for and distributed by Nu-Age Biorganic Products Venetia, Pennsylvania * * * Dosage of Three Tablets Provide: * * * Vitamin B-1 (Thiamine-yeast and rice bran concentrates) 3 mgs. * * * Niacin (yeast conc.) 2 mgs. * * * Vitamin C (rose hip conc.) 100 mgs."

RESULTS OF INVESTIGATION: Analysis showed that the article contained approximately 67% of the declared amount of vitamin B₁, 50% of the declared amount of vitamin C, and 76% of the declared amount of niacin. Investigation showed that the articles in the bottles had been repacked by Nu-Age Biorganic Products, Inc., from bulk drums shipped as described above.

LIBELED: 8-20-62, W. Dist. Pa.

CHARGE: 402(b)(1)—while held for sale, valuable constituents, vitamin B₁, vitamin C and niacin had been omitted or abstracted from the article.

403(a)—when shipped and while held for sale, the drum and bottle labels contained statements which represented and suggested that the article was of significant value for special dietary supplementation, and for the treatment of iron deficiency anemia, by reason of the presence therein of black cohosh, buchu leaves, comfrey root, strawberry leaves, mullein leaves, violet

leaves, pipsissewa herb, juniper berries, licorice root, buckhorn bark, cellulolytic enzyme, amylolytic enzyme, lipolytic enzyme, prickly ash bark, inositol, choline, lecithin, dulse, burdock root, dandelion root, oregon grape-root, yellow dock, gentian root, red clover blossom, hyssop, sarsaparilla root, watercress juice, alfalfa juice, rutin, lemon bioflavonoids, beef peptone, red bone marrow, and desiccated and defatted liver; which statements were false and misleading, since they were contrary to fact; and 403(a) the label statements "Dosage of Three Tablets provide * * * Vitamin B₁ 3 mgs. * * * Niacin 2 mgs. * * * Vitamin C 100 mgs." were false and misleading, as applied to a product containing less than the declared amounts of these ingredients.

DISPOSITION: 3-26-63. Default—destruction.

28997. Sea-Con. (F.D.C. No. 45356. S. No. 46-237 R.)

QUANTITY: 67 1-pt. btls. at Charlotte, N.C.

SHIPPED: 11-16-60, from Columbia, S.C., by Sea-Con, Inc.

LABEL IN PART: (Btl.) "Sea-Con A specially Prepared Concentration From The Sea Minerals in Sea Water Normally Contain 44 Trace Elements as Listed Hereon * * * Manufactured by Sea-Con, Inc. P.O. Box 3115, Columbia, S.C."

ACCOMPANYING LABELING: Booklets entitled "The Story of Sea-Con."

LIBELED: 1-20-61, W. Dist. N.C.

CHARGE: 403(a)—when shipped, the labeling contained false and misleading statements that the ordinary diet is depleted of minerals necessary for proper nutrition; that the article contained all trace elements necessary for the proper metabolism of food by man which cannot be supplied by the ordinary diet, and which are found only in sea water; and that the article supplied significant amounts of 44 minerals for special dietary use; and 403(j)—the article purported to be and was represented as a food for special dietary use by reason of its mineral content and its label failed to bear, as required by regulations, a statement of the proportion of the minimum daily requirement for calcium, phosphorus, iron and iodine supplied by such food when consumed in a specified quantity during the period of one day; and also its label failed to bear the statement "The need for sulphur, bromine, carbon, strontium, boron, silicon, fluorine, nitrogen, aluminum, rubidium, lithium, barium, arsenic, manganese, zinc, lead, selenium, cesium, uranium, molybdenum, thorium, cerium, silver, vanadium, lanthanum, yttrium, nickel, scandium, mercury, gold, radium, cadmium, chromium, cobalt, and tin, in human nutrition has not been established."

The libel alleged also that the article was misbranded under the provisions of the Act relating to drugs as reported in notices of judgment on drugs and devices, No. 7213.

DISPOSITION: 7-31-61. Default—destruction.

28998. Hilcoa food supplements. (F.D.C. No. 45527. S. Nos. 85-682/4 R.)

QUANTITY: 28 ctns., each containing 10 450-tablet pkgs. of protein with lecithin tablets and 146 ctns., each containing 336 vitamin-mineral tablets and 120 protein with lecithin tablets, at North Kansas City, Mo.

SHIPPED: On 2-16-61 and 3-7-61, the 146-ctn. lot was shipped in part from Oakland, Calif., by Hilcoa Co., of San Jose, Calif., and in part from Los Angeles,

Calif., by Toland Labs., of Burbank, Calif., and the 28-ctn. lot was shipped from Oakland, Calif., by Hilcoa Co.

LABEL IN PART: (Ctn.) "Hilcoa Improved Food Supplement **PROTEIN WITH LECITHIN** Meatless * * * Soya bean powder defatted, isolated soya bean protein concentrate, edible casein, casein hydrolysate and protein concentrates, of wheat, corn and cottonseed. Flavored with natural powdered orange juice and sweetened with 1.3% sodium cyclamate * * * Formulated for and Distributed by The Hilcoa Company, 195 East Taylor Street, San Jose, California," and "Hilcoa Improved Food Supplement Natural or Organic Vitamins and Minerals including Protein with Lecithin Bonus Paks * * * Formulated for and Distributed by The Hilcoa Co."

ACCOMPANYING LABELING: Leaflets entitled "Hilcoa Highlights Special Edition Principle Takes Precedence," "Hilcoa Highlights Nov-Dec 1960 Season's Greetings," "Hilcoa takes the lead," and "Food Comes First"; circulars entitled "Is Hilcoa for You?" and "Bank on Hilcoa for Your future"; a distributor's "Handbook" ("Hilcoa" on black cover), and a distributor's "Sales Manual" ("Hilcoa" on red cover), and form letter on a "Hilcoa" letterhead beginning, "It was a pleasure. . . ."

LIBELED: 3-27-61, W. Dist. Mo.; amended libel 5-18-61.

CHARGE: Both lots of articles, 403(a)—when shipped, the label statement "Protein with Lecithin Food Supplement" suggested and implied that the protein and lecithin in the articles were present in significant amounts for special dietary use; which statement was misleading, since the protein in the articles was present in insignificant amounts for such purpose; and lecithin had no special nutritional significance; 403(a)—when shipped, the label statement "Twice, three times, or even more than the recommended daily intake may be desirable to augment your normal diet," was false and misleading, since it suggested and implied that a daily intake of over 108 tablets of the articles was nutritionally desirable and that the normal diet required supplementation with protein and lecithin; which suggestion and implication were contrary to fact; and the label statements "The recommended intake of 12 tablets will provide 720 mg. lecithin (soya bean) plus 62% protein * * * plus arginine 28 mgs. * * * Tyrosine 15.7 mgs." suggested and implied that the articles under the recommended directions for use would supply 62% of the minimum daily requirement for protein, and would supply amino acids in addition to protein; which statements were false and misleading, since they were contrary to fact; and 403(a)—when shipped, the accompanying labeling contained false and misleading representations that the "vitamin and mineral" product was significantly more effective for special dietary use when consumed with the "protein with lecithin," and that the combination of both products resulted in a complete program for special dietary use; that the articles, under the directions for use, would supply the minimum daily requirement for proteins; that most individuals did not get enough proper wholesome food due to nutritional losses resulting from storage, processing, cooking, and selection practices; that the articles supplied an abundance of high quality protein to correct improper protein intake; that the average consumption of protein was less than 50 percent of the minimum daily requirement; and that the lecithin in the articles would supply for special dietary use a significant amount of essential unsaturated fatty acids and an abundance of important elements found in all living cells.

28-carton lot of protein with lecithin tablets, 403(a)—when shipped, the label statements “an important food in normalizing and maintaining body weight” and “every cell tissue and organ in the human body is essentially protein,” were false and misleading, since they were contrary to fact.

146-carton lot of the articles, 403(a)—when shipped, the label bore false and misleading statements and representations, namely, the statements “vitamins and minerals,” “L-lysine monohydrochloride * * * need in human nutrition has not been established,” “Natural or Organic,” and the representations that the ingredients sodium, chlorine, sulfur, potassium, magnesium, zinc, manganese, copper, unsaturated fatty acids from safflower and lecithin, wheat germ, biotin, choline, citrus bioflavonoids, hesperidin complex, inositol, l-lysine monohydrochloride, chlorophyll, bladderwrack, dulse, and Irish moss are present in significant amounts or are of special nutritional significance in the article for special dietary use; 403(a), the accompanying labeling contained false and misleading representations that all ingredients of the article were natural or organic and were balanced; that all the micronutrient food factors in the article were lacking in our modern diets; that the unsaturated fatty acids in the article were recognized as vitamin F; that the article with “Protein with Lecithin” represented an amazing, complete combination which makes other double-tablet supplements obsolete; that the article met the requirements of applicable Federal laws and regulations and was based on U.S. Government standards; that the article supplied all the essential elements for proper and complete nutrition; and that everyone needed a complete, balanced, natural and organic food supplement.

The articles were alleged also to be misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7207.

DISPOSITION: 4-25-62. Default—destruction.

28999. Special 10 with B₁₂ multivitamin capsules, and Geriatric Formula multivitamin capsules. (F.D.C. No. 44745. S. Nos. 8-480 R, 8-645 R.)

QUANTITY: 120 cases, 72 100-capsule btls. each, of Special 10 with B₁₂; and 629 30-capsule jars of Geriatric Formula, at Rochester, N.Y., in possession of East Vitamin Products.

SHIPPED: 5-31-60, from Newark, N.J., by Encapsulations, Inc.

LABEL IN PART: (Btl.) “100 Capsules East Multivitamins * * * Special 10 with B₁₂ * * * Distributed by East Vitamin Products Rochester 2, N.Y.”; (jar) “30 Capsules East Multivitamins Geriatric Formula * * * Distributed by East Vitamin Products Rochester 2, N.J. Each capsule contains * * * Choline Bitartrate 31.4 mg., Inositol 15 mg., Potassium * * * 2 mg.”

ACCOMPANYING LABELING: Leaflets entitled: “East-Multi Vitamins selected by Industry for employee Health, Value and Quality,” “This is Your Order Form,” “East Vitamins Will Help Your Employees Maintain Good Health,” “A Recent Newspaper Editorial,” “A Reader’s Digest Reprint How to Prolong the Prime of Life,” “Read What the Wall Street Journal Has to Say About Vitamins,” “Dear Friends: So many folks have asked . . .,” “This Certificate Worth \$1.00,” and “Order Form . . . Geriatric Formula.”

RESULTS OF INVESTIGATION: The accompanying labeling had been prepared by the dealer and used in promoting sales of the articles.

LIBELED: 7-29-60, W. Dist. N.Y.

CHARGE: Special 10 with B₁₂, 403(a)—while held for sale, the accompanying labeling contained false and misleading representations that the article would furnish balanced nutrition and that it contained more than the minimum adult daily requirement of all the important vitamins; that the food supplies generally available and as consumed were incapable of meeting all requirements for essential vitamins; and that most people required vitamin supplementation of the normal diet.

Geriatric Formula, 403(a)—when shipped and while held for sale, the labeling of the article contained false and misleading representations that the “Potassium * * * need in human nutrition has not been established,” that the nutritional requirements for people of old age are different from those of adults generally, and that a so-called “vitamin B-T” is essential for human beings; and 403(j)—the article purported to be and was represented as a food for special dietary uses by reason of its vitamin content and its label failed to bear as required by regulations, the statement “The need for choline and inositol in human nutrition has not been established.”

The libel alleged also that both articles were misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7208.

DISPOSITION: On 9-12-60, the claimant, Main Electric Co., Inc., d/b/a East Vitamins, Rochester, N.Y., having consented, the court entered a decree of condemnation, and the articles were released under \$5,000 bond to the claimant for the purpose of bringing the articles into compliance with the law.

On 10-9-61, a motion was filed by the Government for forfeiture of the bond on the grounds that the claimant violated the terms of the decree and bond in that it failed to retain intact the entire lot of seized goods and seized literature, and disposed of the seized vitamins and a portion of the literature without notification to or authorization by the Department of Health, Education, and Welfare.

On 5-31-62, after a hearing and in accordance with the court's findings of fact and conclusions of law, judgment was entered, pursuant to which the \$5,000 bond was declared forfeit because claimant failed to abide by the conditions of the bond; \$4,000 of the forfeiture was remitted because of the lack of evil intent by the claimant to violate the conditions of the bond; and the Government was granted a \$1,000 money judgment.

29000. Vitamins, minerals, and other preparations. (F.D.C. No. 45006. S. Nos. 35-196 R, 35-200 R, 35-209/10 R, 35-212 R.)

QUANTITY: 13 100-tablet btls. of vitamin E, 1 100-tablet btl. of One Daily small multiple vitamins, 4 100-tablet btls. of therapeutic vitamins and minerals, 4 60-tablet btls. of super potency vitamins and minerals, 2 90-capsule btls. of Prenatal capsules at New York, N.Y., in possession of Textile Mart, Inc., or the related firms, Jay Norris Co. and Norris Nutritions.

SHIPPED: Between 7-8-60 and 10-18-60, from Elizabeth, Jersey City, and Newark, N.J.

LABEL IN PART: “Vitamin E” (formula 866 and 867), “Therapeutic Vitamins & Minerals” (formula 852), “Super Potency Vitamins & Minerals” (formula 864), “Prenatal Capsules” (formula 859), “One Daily Small Multiple Vitamins” (formula 853).

ACCOMPANYING LABELING: Booklets entitled “Norris Wholesale Vitamin Catalog #606V.”

RESULTS OF INVESTIGATION : The accompanying labeling had been printed locally and used in promoting sales of the articles while held for sale after shipment in interstate commerce.

LIBELED: 10-18-60, S. Dist. N.Y.

CHARGE: 403(a)—“Prenatal capsules” (formula 859), while held for sale, the name of the article “Prenatal capsules” and the statement “So important when the health of the baby depends so much on the health of the mother,” which appeared in the accompanying labeling, represented and suggested that the article was particularly suitable for maintaining the health of pregnant women and their unborn babies; which name, representations and suggestions were false and misleading, since the article was not adequate and effective for such purposes; and the label statement “Need in human nutrition not as yet established” with reference to vitamin E, was false and misleading, since the need for vitamin E in human nutrition has been established;

403(a)—“One Daily small multiple vitamins” (formula 853); “super potency vitamins & minerals” (formula 864); and “vitamin E capsules” (formulas 866 and 867), while held for sale, the label statements “Need in human nutrition not [or “not yet”] established” with reference to vitamin E in these articles, was false and misleading, since the need for vitamin E in human nutrition has been established;

403(j)—“therapeutic vitamins and minerals” (formula 852), while held for sale, the article purported to be and was represented as a food for special dietary uses by reason of its vitamin and mineral content and its label failed to bear, as required by regulations, a statement of the proportion of the minimum daily requirements for vitamins A, B₁, B₂, niacinamide, C, and D, and the minerals calcium, phosphorous, iron and iodine, supplied by such food when consumed in a specified quantity during the period of one day.

The libel alleged also that the articles and certain other articles were misbranded under the provisions of the Act relating to drugs as reported in notices of judgment on drugs and devices, No. 7206.

DISPOSITION: 11-8-61. Consent—destruction.

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PRODUCTS

	N.J. No.		N.J. No.
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Bio-C-Complex tablets_____	28994	Cocoa products_____	² 28921
Brazil nuts, unshelled_____	28978	Cod fillets, frozen_____	28949
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Cabbage _____	28963	Confectionery _____	² 28922-28926
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Carrots _____	28964	Dairy products_____	28929-28932
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Caviar _____	28941	Dill pickles_____	28969
Cereal(s) and cereal products--	28901-	Eggs, frozen_____	28933-28940
	29020	Filberts, shelled_____	28988
binder _____	¹ 28906		

¹ (28906) Prosecution contested.
² (28911, 28912, 28921, 28922) Injunction issued.

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Noodles. <i>See</i> Macaroni and		Tomato(es), canned	28972, 28973
noodle products.		paste, canned	28974
Nuts and nut products	28978-28992	puree	28975
Onion flakes	28971	Vegetables. <i>See</i> Fruits and vege-	
Peaches, canned	28954, 28955	tables.	
Peanuts, unshelled	28981, 28982	Vitamin, mineral, and other prod-	
Pecans, shelled	28983, 28985, 28986	ucts of special dietary sig-	
ground	28984	nificance	28993-29000
Perch fillets, frozen	28945	Walnuts, black, shelled	28987, 28989, 28990
Pesticide chemical violations	28916, 28963-28965	shelled	28988
Pickles, dill	28969	Wheat	² 28911-28916

¹ (28906) Prosecution contested.

² (28911, 28912, 28921, 28922) Injunction issued.

³ (28993) Seizure contested. Motion for summary judgment. Contains opinions of the courts.

SHIPPERS, MANUFACTURERS, AND DISTRIBUTORS

	N.J. No.		N.J. No.
Acadia Fisheries, Ltd.:		Corbett Canning Co., Inc.:	
frozen fish fillets-----	28946	canned peaches-----	28955
Affiliated Food Stores:		Corbett Sales Co.:	
flour, cornmeal, dried pinto		canned peaches-----	28955
beans, and unpopped pop-		Council Bluffs Grape Growers	
corn -----	28908	Association:	
Alexander Marketing Co.:		grape puree-----	28962
cabbage -----	28963	Dairy Maid Products Co.:	
American Diet aids Co., Inc. <i>See</i>		nonfat dry milk-----	28932
Sta-Trim Confections, Inc.		Defender Packing Co.:	
Ariston Canning Co., Inc.:		canned tomatoes-----	28973
pizza sauce (tomato product)--	28977	Delfino, Joseph, & Sons:	
Atlas Sea Food, Inc.:		pizza sauce (tomato product)--	28976
frozen frog legs-----	28953	DeMartini Macaroni Co., Inc.:	
Barnes & Sons Shelling Co.:		egg noodles, macaroni, and	
shelled black walnuts-----	28987	spaghetti -----	28909
Barrows Chemical Co., Inc.:		Denison Poultry & Egg Co.:	
Hemo-Glo tablets-----	28996	frozen eggs-----	28933
Beckham Candy Co.:		deRedon Food Products Corp.:	
candy -----	² 28922	cherries in sirup-----	28961
Beich, Reinhold:		Donig Co., Inc.:	
wheat -----	² 28911	shelled black walnuts-----	28990
Boats. <i>See</i> Lady of the Rosary,		Dried Milk Products Co-op.:	
Rose L. Silva, and Terra		nonfat dry milk-----	28932
Nova.		Dupont, D. E.:	
Brewer & Co., Inc.:		flour and potatoes-----	28907
Bio-C-Complex tablets-----	28994	Dupont, J. B.:	
Brown Fruit Co.:		flour and potatoes-----	28907
unshelled peanuts-----	28981	Dupont Wholesale Co. <i>See</i> In-	
Cayol Foods:		terstate Wholesale Grocers,	
Bio-C-Complex tablets-----	28994	Inc.	
Central Dairy Products Co.:		East Vitamin Products:	
sugar -----	28927	Special 10 with B ₁₂ multivita-	
Collins-Lee Co.:		min capsules and Geriatric	
salted codfish-----	28950	Formula multivitamin cap-	
Commodore Foods, Inc.:		sules -----	28999
frozen fish fillets-----	28946, 28947	Economou, C., Cheese Corp.:	
Compton Nut Co., Inc.:		grated cheese-----	28931
shelled walnuts and shelled		Economy Cash & Carry, Inc.:	
filberts -----	28988	flour -----	28903
Consolidated Food Processors,		El Morro Distributors:	
Inc. <i>See</i> Marshall Canning.		frozen shrimp-----	28952
Consolidated Pecan Sales Co.,		Encapsulations, Inc.:	
Inc.:		Special 10 with B ₁₂ multivata-	
shelled pecans-----	28985	min capsules and Geriatric	
Continental Drug Co.:		Formula multivitamin cap-	
hematinic tablets-----	28995	sules -----	28999
Continental Nut Co.:		Farmers Elevator Co.:	
unshelled brazil nuts-----	28978	wheat -----	28916

² (28911, 28912, 28921, 28922) Injunction issued.

	N.J. No.		N.J. No.
Farmers Elevator Co. <i>See</i>		Lady of the Rosary, Boat :	
Whan, Ivan.		frozen perch fillets-----	28945
Federated Foods, Inc. :		Lane, Letty, Co. :	
sauerkraut, dill pickles, and		chocolate nonpareils (candy) --	28926
sweet gherkins-----	28969	Levi, E. M., Elevators, Inc. :	
Fisher Nut Co. :		wheat -----	28913
ground pecans-----	28984	McCrea, D., & Son, Inc. :	
Flagstaff Foods :		shelled pecans-----	28986
spaghetti, egg noodles, and		Markham Bros. & Co. :	
macaroni -----	28910	canned tomatoes-----	28972
Fleishman Co. :		Martin, R. P. :	
frozen eggs-----	28939	frozen eggs-----	28937
Foy, C. L., Co. :		Martin's Hatchery, Inc. :	
rice -----	28919	frozen eggs-----	28937
Gamboa, F. G. :		Marshall Canning Div., Con-	
frozen fish fillets-----	28948	solidated Food Processors,	
General Syrup Corp. :		Inc. :	
sirup -----	28928	canned green beans-----	28966
Giger, A., & Co. :		Meadors, Inc. :	
flour -----	28904	peppermint sticks (candy) ----	28925
Grand Caillou Packing Co., Inc. :		Meletio Sea Co., Inc. :	
canned shrimp-----	28951	frozen fish fillets-----	28946, 28947
Gross Egg Co., Inc. :		Minerva Dairy, Inc. :	
frozen eggs-----	28935	butter -----	28929
Hance Bros. & White Co. :		Mueller, D. L. :	
hematinic tablets-----	28995	butter -----	28929
Harrison, J. T., & Associates :		Navajo Shopping Center :	
canned tomatoes-----	28973	pinon nuts-----	28992
Hemlock Farmer's Cooperative :		Nelson Brokerage Co. :	
wheat -----	28915	flour and cereal binder-----	¹ 28906
Hilcoa Co. :		Norris, Jay, Co. :	
Hilcoa food supplements-----	28998	vitamins, minerals, and other	
Horowitz, L. S. :		preparations -----	29000
candy -----	² 28922	Norris Nutritions :	
Indiana Wholesale Food Supply		vitamins, minerals and other	
Co., Inc. :		preparations -----	29000
unpopped popcorn and rice----	28917	Nu-Age Biorganic Products, Inc. :	
Industria Nacional Oceanica, S. A. :		Hemo-Glo tablets-----	28996
frozen shrimp-----	28952	Olympia, Boat :	
Interstate Wholesale Grocers,		frozen perch fillets-----	28945
Inc. :		Omaha Bakers Supply Co. :	
flour and potatoes-----	28907	shelled Spanish peanuts-----	28980
Iron Gate Products Co., Inc. :		Osborn Bean & Elevator Co. :	
caviar -----	28941	dried pinto beans-----	28968
Itoh, C., & Co., Ltd. :		PMC Canning Co., Inc. :	
frozen frog legs-----	28953	pizza sauce (tomato product) -	28976
Johnson Nut Co. :		Peanut Specialty Co. :	
mixed nuts-----	28991	peppermint lozenges (candy) --	28924
Kulm Milling Co. :		Percy-Lobdell Co. <i>See</i> Interstate	
wheat -----	² 28911	Wholesale Grocers, Inc.	

¹ (28906) Prosecution contested.² (28911, 28912, 28921, 28922) Injunction issued.

	N.J. No.		N.J. No.
Pick-Shapiro Fisheries, Inc.:		Sta-Trim Confections, Inc., Div.	
frozen fish-----	28942	of American Dietaids Co.,	
Pilgrim, Boat:		Inc.:	
frozen cod fillets-----	28949	Sta-trim candy bar-----	³ 28993
Produce, S. T.:		Storey, F. D.:	
carrots -----	28964	sauerkraut, dill pickles, and	
Quality Egg Co., Inc.:		sweet gherkins-----	28969
frozen eggs-----	28940	Storey Food Products Co., Inc.:	
Rock Island Produce Co.:		sauerkraut, dill pickles, and	
frozen eggs-----	28935	sweet gherkins-----	28969
Romer Mercantile & Grain Co.:		Sunfresh Products of Utah, Inc.:	
dried pinto beans-----	28967	nonfat dry milk-----	28932
Rose L. Silva, Boat:		Terra Nova, Boat:	
frozen pollock fillets-----	28944	frozen haddock fillets-----	28943
Rossman, Fred:		Textile Mart, Inc.:	
wheat -----	² 28911	vitamins, minerals, and other	
Sampson Canning Co.:		preparations -----	29000
canned green beans-----	28966	Tip Top Dairies Co.:	
Santoto, G., & Sons, Inc.:		butter -----	28930
spaghetti, egg noodles, and		Toland Laboratories:	
macaroni -----	28910	Hilcoa food supplements-----	28998
Santoto, Joseph:		Topco Associates, Inc.:	
spaghetti, egg noodles, and		canned peaches-----	28954
macaroni -----	28910	sirup -----	28928
Schneider Bros., Inc.:		United A-G Stores Cooperative,	
frozen eggs-----	28938	Inc.:	
Sea-Con, Inc.:		flour -----	28902
Sea-Con -----	28997	Vukasovich, J. W.:	
Seneca Grocery Co.:		romaine lettuce-----	28965
enriched flour-----	28905	Vukasovich, J. (Bud), Co.:	
Singer Candy Co.:		romaine lettuce-----	28965
candy -----	28923	Washington Chocolate Co.:	
Singer, Leo, Candy & Tobacco		chocolate and cocoa products_	² 28921
Co.:		Watson-Higgins Milling Co.:	
candy -----	28923	flour -----	28901
Spring River Shelling Co.:		Whan, Ivan:	
shelled black walnuts-----	28989	wheat -----	² 28912
Stanislaus Food Products Co.:		Yonover, Maurice:	
canned peaches-----	28954	unpopped popcorn and rice----	28917

² (28911, 28912, 28921, 28922) Injunction issued.

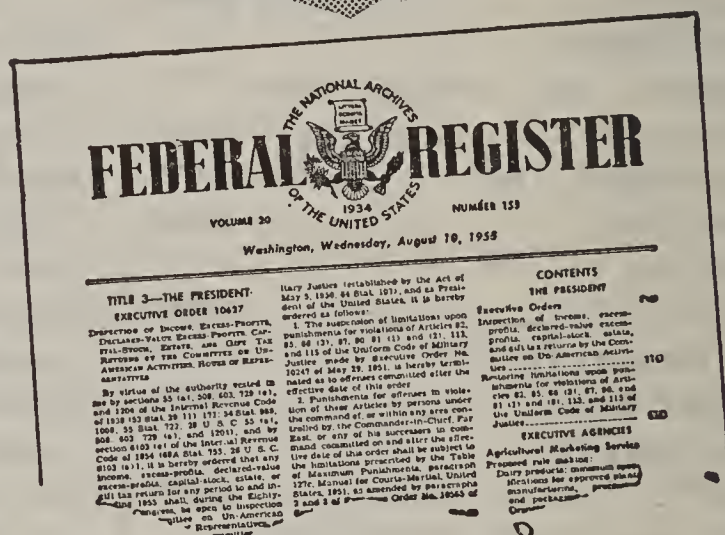
³ (28993) Seizure contested. Motion for summary judgment. Contains opinions of the courts.

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U.S. Department of Health, Education, and Welfare
FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD,
DRUG, AND COSMETIC ACT

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29001-29100

APR 7 - 1964

FOODS

CURRENT SERIAL RECORDS

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were alleged to be adulterated or misbranded when introduced into and while in interstate commerce, when shipped to a holder of a guaranty, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default, consent, or, in one case, summary judgment; (2) criminal proceedings which were terminated upon pleas of guilty and nolo contendere and, in one case, upon a verdict of guilty after trial by jury; (3) injunction proceedings in which temporary restraining orders and other injunctive decrees were entered. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal and injunction proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., March 3, 1964.

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*SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN VIOLATIONS
REPORTED IN F.N.J. NOS. 29001-29100*

Adulteration, Section 402(a) (1), the article contained a poisonous or deleterious substance which might render it injurious to health; Section 402(a) (2) (A), the article contained an added deleterious substance, which was unsafe within the meaning of Section 406; Section 402(a) (2) (B), the article was a raw agricultural commodity and contained a pesticide chemical which was unsafe within the meaning of Section 408(a); Section 402(a) (2) (C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a) (4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b) (1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b) (2), a substance had been substituted in whole or in part for the article; Section 402(b) (4), a substance had been added to the article or mixed or packed therewith so as to make it appear better or of greater value than it was; Section 406, a poisonous or deleterious substance was unsafe since such substance was not required in the production of food and could have been avoided by good manufacturing practice; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because no tolerance or exemption from the requirement of a tolerance for such pesticide chemical in or on the raw agricultural commodity had been prescribed by the Secretary of Health, Education, and Welfare; and Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use.

Misbranding, Section 403(a), the labeling of the article was false and misleading; Section 403(b), the article was offered for sale under the name of another food; Section 403(e) (2), the article was in package form, and it failed to bear a label containing an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g), the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed by regulations and (1) it failed to conform to such definition and standard and (2) its label failed to bear, as required by regulations, the common names of certain optional ingredients present in such food; Section 403(i) (2), the article was not subject to the provisions of Section 403(g) and the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; Section 403(j), the article purported to be and was represented for special dietary uses, and its label failed to bear such information concerning its vitamin, mineral, and other dietary properties as the Secretary had determined to be, and by regulation prescribed as, necessary in order fully to inform purchasers as to its value for such uses; and Section 403(k), the article contained an artificial flavoring, and failed to bear labeling stating that fact.

BEVERAGES AND BEVERAGE MATERIALS*

29001. Green coffee beans (2 seizure actions). (F.D.C. No. 48955. S. Nos. 36-786/87 V.)

QUANTITY: 752 150-lb. bags, at New Orleans, La., in possession of E. S. Binings, Inc.

SHIPPED: 3-29-63, from Puerto Barrios, Guatemala, and San Jose, Costa Rica.

LIBELED: 5-14-63, E. Dist. La.

CHARGE: 402(a)(3)—contained bird excreta; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 5-16-63. Consent—300 bags claimed by J. A. Folger & Co., and 452 bags claimed by Delta Trading Co. Reconditioned and segregated; 1,930 lbs. destroyed.

29002. Green coffee beans. (F.D.C. No. 49092. S. Nos. 96-947 V, 97-059 V, 39-641/43 X.)

QUANTITY: 1,420 130-lb. bags, at Bronx, N.Y.

SHIPPED: Imported on 3-13-63, from Africa, by C. A. Mackey & Co., Inc.

LABEL IN PART: (Bag) "Product of Angola Angola Robusta Cafe * * * Socicafe."

LIBELED: 7-3-63, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained insect-damaged coffee beans when shipped.

DISPOSITION: 8-15-63. Consent—claimed by Ph. Wechsler & Son, Inc., Bronx, N.Y., for export from the United States.

29003. Green coffee beans. (F.D.C. No. 49280. S. Nos. 34-761/62 X.)

QUANTITY: 834 132-lb. bags, at Minneapolis, Minn.

SHIPPED: 6-7-63, from New Orleans, La., by S. Jackson & Son, Inc.

LABEL IN PART: (Bag) "Cafe Congo Robusta P O Congo W2B O.C.R."

LIBELED: 8-20-63, Dist. Minn.

CHARGE: 402(a)(3)—contained insects and insect-damaged coffee beans when shipped.

DISPOSITION: 10-15-63. Consent—claimed by Volkart Bros., Inc., New York, N.Y., for export to original foreign supplier.

29004. Cherry-apple-flavored drink. (F.D.C. No. 48845. S. Nos. 22-064/65 V.)

QUANTITY: 700 cases, each containing 12 1-qt. 14-oz. cans, at Salt Lake City, Utah.

SHIPPED: Between 12-13-62 and 2-27-63, from San Fernando, Calif., by Paramount Citrus Association, Inc.

LABEL IN PART: (Can) "Cal-Fame Cherry Apple Juice Drink Vitamin 'C' Enriched—Contains: Water, sugar, apple juice concentrate, cherry, apple and other natural flavors, citric acid, ascorbic acid and U.S. Certified Color * * * Paramount Citrus Association, Inc., San Fernando, California."

RESULTS OF INVESTIGATION: Examination showed that the article contained only a small proportion of fruit juice.

LIBELED: 4-17-63, Dist. Utah.

*See also Nos. 29059, 29060.

CHARGE: 403(a)—when shipped, the name “Cherry Apple Juice Drink” and the label vignette depicting fresh cherries and apples, were false and misleading as applied to a product whose ingredients were declared on its label to consist of water, sugar, apple juice concentrate, cherry, apple, and other natural flavors, citric acid, ascorbic acid, and U.S. certified color.

DISPOSITION: 6-21-63. Default—delivered to a Government institution.

29005. Chocolate-flavored beverages. (F.D.C. No. 47869. S. No. 35-317 R.)

INFORMATION FILED: 11-5-62, E. Dist. N.Y., against Diamond Club Beverages Corp., t/a Threemor Sales Co., Brooklyn, N.Y., and Louis Zivin, president.

SHIPPED: 11-16-60, from Brooklyn, N.Y., to New Brunswick, N.J.

LABEL IN PART: (Btl.) “THREEMOR * * * The Chocolate Cow.”

CHARGE: 402(a) (3)—contained insects; and 402(a) (4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-27-63. Corporation—\$500 fine; Zivin—\$100 fine.

29006. Various bottled beverages. (F.D.C. No. 48525. S. Nos. 22-533 T, 22-536 T, 66-272/75 T, 76-609/10 T, 76-615/16 T.)

INFORMATION FILED: 5-2-63, Dist. Utah, against Seven-Up Bottling Co. of Cedar City, a corporation, Cedar City, Utah, and Henry W. Randall, president, and Clarence C. Randall, secretary.

SHIPPED: Between 3-17-62 and 7-15-62, from Cedar City, Utah, to Page, Ariz.

LABEL IN PART: (Btl.) “SEVEN-UP Contains * * * 12 Fl. Ozs. [or “7 Fl. Ozs.”] SEVEN-UP BOTTLING CO. CEDAR CITY, UTAH”; “ROYAL CROWN RC COLA ROYAL CROWN BOTTLING CO., CEDAR CITY, UTAH”; and “ORANGE BOTT. BY SEVEN-UP BOTT. CO., CEDAR CITY, UTAH.”

CHARGE: 402(a) (3)—contained clumps of mold, dirt, and other foreign substances; and 402(a) (4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-10-63. Corporation—\$3,200 fine, of which \$2,700 was suspended; Henry W. Randall—\$2,000 fine, of which \$1,800 was suspended; Clarence C. Randall—\$1,000 fine, of which \$900 was suspended; and, in addition, each defendant placed on probation for 2 years.

CEREALS AND CEREAL PRODUCTS

BAKERY PRODUCTS

29007. Frozen cakes. (Inj. No. 420.)

COMPLAINT FOR INJUNCTION FILED: 10-5-61, N. Dist. Ga., against Southern Bakeries Co., a corporation, Atlanta, Ga., Ogden A. Guilfuss, president of the corporation, and Charles R. Loyd, manager of the corporation’s plant on Highland Ave., N.E., Atlanta, Ga.

CHARGE: The complaint alleged that the defendants were engaged at the corporation’s Highland Avenue plant in the business of preparing, packing, and storing for shipment in interstate commerce, and causing to be introduced and delivered for introduction into interstate commerce, frozen cakes which were adulterated as follows: 402(a) (3)—the articles contained moth larvae, insect fragments, and rodent hairs; and 402(a) (4)—the articles had been prepared, packed, and held under insanitary conditions.

The complaint alleged further that the insanitary conditions at the above-mentioned plant resulted from and consisted of the presence of live adult insects and larvae in the cake flour handling equipment including the elevator boot of the cake dump hopper, the cake flour sifter, siftings from the sifter, and the spout from the sifter which leads directly to the weighing hopper over the dough mixer, the practice of employees shaking the bags of flour over the cake flour hopper without first brushing off the outsides of the bags, the presence in samples of flour collected from the cake flour handling equipment of adult and larval *Tribolium* and cigarette beetles, and larval cast skins from *Tribolium* beetles, live adult insects and larvae in various parts of the bread flour handling equipment including the top of the bulk flour storage bins, the auger which carries flour from the bulk bins to the sifter, the siftings from the sifter and a bucket placed under the overflow pipe extending from the scale hopper, the presence in samples of flour collected from the bread flour handling equipment of sawtooth grain beetles, *Tribolium* beetles, cigarette beetles, and larval cast skins from *Tribolium* beetles, the presence of dead roaches and mouse excreta pellets in the raw materials storage room near a number of 100-lb. bags of cake flour, and the presence of numerous houseflies in the cake department, broken and ill-fitting windows and screens in the plant, and outside doors standing open all day thereby permitting the entry of flies and other pests into the plant.

The complaint alleged also that the defendants had stored at a commercial cold storage firm in Atlanta, Ga., assorted frozen cakes produced at the defendants' Highland Avenue plant and consisting of 78,060/12-oz. packages labeled in part "Southern-Banana Nut Cake," 25,424/17-oz. packages labeled in part "Southern Cocanut Cake," 20,652/12-oz. packages labeled in part "Southern Caramel Cake," and 17,360/18-oz. packages labeled in part "Southern Chocolate Cake"; that such frozen cakes constituted a menace to interstate commerce because they were adulterated in the manner hereinbefore described; that defendants had been previously warned by plant inspections and a notice of hearing of the insanitary conditions in their plant; and that despite such warnings, the defendants continued to cause introduction and delivery for introduction into interstate commerce of adulterated foods.

DISPOSITION: On 10-5-61, a temporary restraining order was entered enjoining the defendants against the actions complained of. On 10-12-61, with the parties agreeing, the court entered a preliminary injunction enjoining the defendants from directly or indirectly doing the following acts:

(a) introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods consisting of cakes and other bakery products which contain moth larvae, insect fragments, rodent hairs, or other filth, or which have been prepared, packed, and held under insanitary conditions whereby they may have become contaminated with filth;

(b) introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, the frozen cakes now stored to the account of Southern Bakeries Co., at Commercial Cold Storage, Inc., 3485 Empire Boulevard, S.W., Atlanta, Ga., which cakes were produced at the defendants' plant at 375 Highland Avenue, N.E., Atlanta, Ga., between 8-10-61 and 8-25-61, and consist of the following:

78,060/12-oz. packages, more or less, of an article labeled in part:

"Southern-Banana Nut Cake Ready to Serve No Baking * * * Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia."
(Packed under Codes "H 10." "H 11," "H 23," "H 24," and "H 25".);

25,424/17-oz. packages, more or less, of an article labeled in part:

"Southern Cocconut Cake Ready to Serve No Baking * * * Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia." (Packed under Codes "H 15," "H 16," and "H 17".) ;

20,652/12-oz. packages, more or less, of an article labeled in part:

"Southern Caramel Cake Ready to Serve No baking * * * Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia." (Packed under Codes "H 22," and "H 23".) ; and

17,360/18-oz. packages, more or less, of an article labeled in part:

"Southern Chocolate Cake Ready to Serve No baking * * * Frozen Foods Division of Southern Bakeries, General Offices, Atlanta, Georgia." (Packed under Codes "H 17" and "H 18".) ;

(c) causing any food after its shipment in interstate commerce to be held or processed at defendants' plant at 375 Highland Avenue, N.E., Atlanta, Ga., under insanitary conditions whereby such food may become contaminated with filth; and

(d) introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, foods consisting of cakes and other bakery products prepared, packed, and held at defendants' plant at 375 Highland Avenue, N.E., Atlanta, Ga., unless and until:

(i) the plant is thoroughly cleaned and rendered suitable for use in connection with the preparation, packing, and holding of foods for human consumption, to wit, unless and until all rodent and insect filth is removed from said plant, and the equipment used in the preparation, packing, and storing of said foods is cleaned and made suitable for use in the preparation, packing, and storage of foods for human consumption; all rodent and insect infestation in said plant is eliminated; the means of ingress and egress by rodents and insects are eliminated, and any similar insanitary conditions which may result in the contamination of foods for human consumption while prepared, packed, and held in said plant are eliminated;

(ii) all of the foods on hand at said plant at the time said plant is cleaned, and rendered suitable for the preparation, packing, and storage of food for human consumption are destroyed, denatured for use as animal feed, or cleaned, segregated, or otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and all expenses of such supervision are paid by the defendants at the rate of \$6 per hour or part thereof per representative for the supervision, \$7 per hour or part thereof per person for laboratory and analytical work, and \$12 per day per person for subsistence expenses; and

(iii) an inspection is made of said plant by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, all expenses of such inspection are paid by the defendants at the rates described in subparagraph (ii) above, and a report made to the court which shows that the above-described or any similar insanitary conditions no longer exist, and that the foods for human consumption described in subparagraph (ii) above have been destroyed, denatured, or brought into compliance with the law, as provided in said subparagraph (ii).

29008. Fruitcake. (F.D.C. No. 48636. S. No. 41-577 V.)

QUANTITY: 17 cases, each containing 12 2-lb. cans, at Bronx, N.Y.

SHIPPED: 11-30-62, from Newark, N.J., by Affiliated Bakers Corp.

LABEL IN PART: (Can) "Nectar Rum and Brandy Flavored Fruit Cake * * * Nuts * * * Pure and Artificial Flavors, Sodium Propionate * * * Nectar Foods, Inc., Newark, N.J."

RESULTS OF INVESTIGATION: Examination showed that the "nuts" as listed in the ingredient statement were not present. Organoleptic examination revealed no rum or brandy flavor. The mandatory information was in part inconspicuous due to the fact that the label was placed partly under the can lid, thereby concealing the manufacturer's name and address, quantity of contents statement, and list of ingredients.

LIBELED: On or about 2-19-63, S. Dist. N.Y.

CHARGE: 403(a)—when shipped, the label statements "Rum and Brandy Flavored" and "Nuts" were false and misleading; and 403(f)—the information required to appear on the label under sections 403(e) (1) and (2), 403 (i) (2), and 403(k), namely, the name and address of the manufacturer, packer, or distributor; the quantity of contents statement; the common or usual name of each ingredient; and the declaration of artificial flavoring and a chemical preservative, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 3-28-63. Default—destruction.

29009. Chocolate-flavored wafers. (F.D.C. No. 49025. S. No. 15-381 X.)

QUANTITY: 6 ctns., each containing 48 8-oz. pkgs., at Cincinnati, Ohio.

SHIPPED: 5-14-62, from Evansville, Ind.

LIBELED: 7-5-63, S. Dist. Ohio.

CHARGE: 402(a) (3)—contained insects, insect larvae, and insect parts while held for sale.

DISPOSITION: 9-10-63. Default—destruction.

29010. Creme wafer sticks. (F.D.C. No. 48262. S. No. 12-127 V.)

QUANTITY: 35 cases, of 12 boxes each, at Chicago, Ill.

SHIPPED: 9-17-62, from Grand Rapids, Mich., by Holland-American Wafer Co.

LABEL IN PART: (Box) "Dutch Twins Creme Wafer Sticks * * * Net Weight 12 Ounces Holland-American Wafer Company Grand Rapids, Michigan."

RESULTS OF INVESTIGATION: Examination showed the article to be short weight.

LIBELED: 10-29-62, N. Dist. Ill.

CHARGE: 403(e) (2)—the article failed to bear a label containing an accurate statement of the quantity of contents when shipped.

DISPOSITION: 11-21-62. Default—destruction.

29011. French bread. (F.D.C. No. 47088. S. No. 48-881 T.)

INFORMATION FILED: 11-9-62, Dist. Nev., against Francis A. Toscani, t/a Franco American Baking Co., Reno, Nev.

SHIPPED: 11-17-61, from Nevada to California.

LABEL IN PART: "Franco American Baking Co. French Bread Genuine Sour Reno, Nevada Standard Loaf Min. Wt. 16 oz."

CHARGE: 402(a)(3)—contained insect and larvae fragments, and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-24-63. Sentence of probation for 5 years.

29012. Bread and rolls. (F.D.C. No. 46023. S. Nos. 56-772 R, 56-774 R, 56-776 R.)

INFORMATION FILED: 11-21-61, S. Dist. N.Y., against Diamond Baking Co., Inc., Bronx, N.Y., and Louis Palmer, plant manager.

SHIPPED: 3-22-61, from New York, N.Y., to Danbury, Conn.

CHARGE: 402(a)(4)—prepared, packed, and held under insanitary conditions.

PLEA: Not guilty.

DISPOSITION: The case came to trial before a jury on 3-4-63, and was terminated on 3-8-63, with a verdict of guilty. On 4-3-63, the defendants received the following sentence: Corporation—\$3,000 fine; Palmer—\$300 fine.

29013. Bread and rolls. (F.D.C. No. 47117. S. Nos. 1-927 T, 1-929 T, 1-933 T.)

INFORMATION FILED: 10-26-62, S. Dist. Fla., against Setzer's Bakery, Inc., Div. of Food Fair Stores, Inc., a corporation, Jacksonville, Fla., and Louis S. Slott, plant manager.

SHIPPED: 9-26-61, from Florida to Georgia.

LABEL IN PART: "LADY FAIR KING SIZE White Enriched Bread Net Weight 1 LB. 4 OZS.," "LADY FAIR Enriched Bread Made With Buttermilk Net Weight 1 LB. 4 OZS.," "LADY FAIR Enriched Sliced Wiener Rolls Net Weight 16 OZS."

CHARGE: 402(a)(3)—contained insects and insect parts; 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 7-22-63. Corporation—\$1,000 fine; Slott—\$500 fine.

FLOUR

29014. Flour. (F.D.C. No. 48700. S. No. 61-545 V.)

QUANTITY: 30 50-lb. bags at Jacksonville, Tex., in possession of East Texas Associated Grocers, Inc.

SHIPPED: 1-8-63, from Yukon, Okla.

LIBELED: 2-7-63, E. Dist. Tex.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-6-63. Default—delivered to a public institution for use as animal feed.

29015. Flour. (F.D.C. No. 48839. S. Nos. 21-935/37 V.)

QUANTITY: 250 100-lb. bags and 300 bales, each containing 2 25-lb. bags, at Denver, Colo.

SHIPPED: 2-28-63, from Atchison, Kans.

RESULTS OF INVESTIGATION: Examination showed that the article was shipped in a rodent-infested railroad car.

LIBELED: 4-5-63, Dist. Colo.

CHARGE: 402(a)(4)—held under insanitary conditions while in interstate commerce.

DISPOSITION: 5-28-63. Default—delivered to a public institution for use as animal feed.

29016. Flour. (F.D.C. No. 48963. S. No. 8-675 V.)

QUANTITY: 432 100-lb. bags at New Haven, Conn.

SHIPPED: On 4-3-63, the lot was shipped from Bridgeport, Conn., to Springfield, Mass., by the New York, New Haven & Hartford Railroad, and on 5-6-63, was reshipped to New Haven, Conn.

RESULTS OF INVESTIGATION: Investigation revealed that the article had been held in a rodent-infested railroad car.

LIBELED: 5-22-63, Dist. Conn.

CHARGE: 402(a)(3)—when shipped, contained rodent urine and rodent hairs; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 7-9-63. Default—delivered to a Federal institution for use as animal feed.

29017. Flour. (F.D.C. No. 49108. S. No. 767 X.)

QUANTITY: 189 100-lb. bags, at Atlanta, Ga.

SHIPPED: 6-11-63, from Minneapolis, Minn.

RESULTS OF INVESTIGATION: Investigation showed that the article had been stored under insanitary conditions in an insect-infested warehouse of the Taylor Baking Co., Inc., Atlanta, Ga., and thereafter delivered to the dealer in whose possession the article was seized.

LIBELED: 7-11-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained insects and insect parts; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-19-63. Default—ordered destroyed or delivered to a public institution for use as animal feed.

29018. Flour and cornmeal. (F.D.C. No. 48868. S. Nos. 45-337/40 V, 45-348 V, 83-591 V.)

INFORMATION FILED: 7-9-63, E. Dist. Ark., against Dial Wholesale Grocer Co., a corporation, Brinkley, Ark., and Lambert C. Dial, president.

ALLEGED VIOLATIONS: Between 7-31-62 and 1-3-63, while quantities of flour and cornmeal were being held for sale after shipment in interstate commerce, the defendant caused the articles to be held in a building that was accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 8-13-63. Each defendant—probation for 1 year.

29019. Flour, cornmeal mix, and egg noodles. (F.D.C. No. 48553. S. Nos. 84-519/23 T, 84-525 T.)

INFORMATION FILED: 6-3-63, E. Dist. Ark., against Helena Wholesale, Inc., Helena, Ark.

ALLEGED VIOLATIONS: Between 7-24-62 and 9-5-62, while quantities of flour, cornmeal mix, and egg noodles were being held for sale after shipment in interstate commerce, the defendant caused the articles to be held in a building that was accessible to insects, and to be exposed to contamination by insects, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained insects, insect larvae, pupae and cast skins; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-13-63. \$1,000 fine.

29020. Flour, rice, macaroni, baby cereal, and candy. (F.D.C. No. 48565. S. Nos. 83-589/90 T, 45-608 V, 45-614 V, 45-617 V, 45-621 V.)

INFORMATION FILED: 6-3-63, E. Dist. Ark., against Forrest City Grocery Co., a corporation, Forrest City, Ark., Sol Cohn, president, and William Cohn, secretary-treasurer.

ALLEGED VIOLATIONS: Between 4-18-62 and 10-3-62, while quantities of flour, rice, macaroni, baby cereal, and candy were being held for sale after shipment in interstate commerce, the defendants caused the articles to be held in a building that was accessible to insects and rodents and to be exposed to contamination by insects and rodents, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained insects, insect excreta, insect webbing, larvae, cast skins, pupae, and rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-13-63. Corporation—\$1,250 fine; individuals—\$5 fine each.

29021. Flour. (F.D.C. No. 48373. S. Nos. 45-401/2 V, 45-407/8 V.)

QUANTITY: 34 bales, each containing 12 2-lb. bags of all-purpose flour; 17 bales, each containing 10 5-lb. bags, of enriched flour; 13 bales, each containing 10 5-lb. bags, and 12 bales, each containing 5 10-lb. bags, of all-purpose flour, at Springfield, Mo., in possession of Rothermel Bros. Flour & Feed Co.

SHIPPED: Between 3-5-62 and 8-9-62, from Wichita, Kans., and Claflin, Kans.

LIBELED: 11-21-62, W. Dist. Mo.

CHARGE: 402(a)(3)—contained insect larvae (34-bale, 13-bale, and 12-bale lots), insects, insect pupae, and cast skins (34-bale lot), insects (13-bale lot), and insect cast skins (12-bale lot); and 402(a)(4)—all lots held under insanitary conditions.

DISPOSITION: 1-15-63. Default—delivered to a charitable institution for use as animal feed.

29022. Flour. (F.D.C. No. 48733. S. No. 23-128 V.)

QUANTITY: 94 bales, each containing 10 5-lb. bags, at Pocatello, Idaho.

SHIPPED: 2-22-63, from Ogden, Utah, by General Mills, Inc.

LABEL IN PART: (Bag) "Gold Medal Flour All Purpose Enriched * * * 8 Oz. of Enriched Flour Supply * * * General Mills, Inc. Minneapolis, Minnesota."

RESULTS OF INVESTIGATION: Examination showed that a gummed band bearing additional labeling had been placed around each 5-lb. bag in such manner as

to partially obscure the statement of enrichment and totally obscure the name and address of the manufacturer.

LIBELED: 4-4-63, Dist. Idaho.

CHARGE: 403(f)—when shipped, the information required under 403(e) (1) and 403(j), namely, the name and address of the manufacturer, packer, or distributor, and the statement of enrichment, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 4-29-63. Default—delivered to a Government institution.

29023. Flour and self-rising flour. (F.D.C. No. 48429. S. Nos. 47-270/72 V.)

QUANTITY: 90 25-lb. bags of plain flour, 295 25-lb. bags of self-rising flour, and 22 bales, each containing 5 10-lb. bags of self-rising flour, at Pocahontas, Ark., in possession of L. K. Ashcraft Co.

SHIPPED: 9-20-62 and 10-29-62, from Wichita, Kans., and Kansas City, Mo.

LIBELED: 12-27-62, E. Dist. Ark.

CHARGE: 402(a) (3)—contained insects (all lots), and insect larvae, insect pupae, and cast skins (bales only); and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 2-7-63. Default—delivered to a public institution for use as animal feed.

29024. Self-rising flour. (F.D.C. No. 44962. S. Nos. 2-164/67 R, 2-175/79 R.)

INFORMATION FILED: 1-10-61, W. Dist. N.C., against Banner Roller Mills, Inc., Lincolnton, N.C.

SHIPPED: Between 3-18-60 and 4-29-60, from North Carolina to South Carolina.

LABEL IN PART: (Bag) "10 Lbs. [or "5 Lbs." or "25 Lbs."] Net Weight White Satin Self-Rising Flour [or "Phosphated Flour Bleached"] Banner Roller Mills, Inc., Lincolnton, N.C."

CHARGE: 402(a) (3)—contained insect filth (3 counts) and insect and rodent filth (3 counts); and 402(a) (4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 4-16-63. \$750 fine.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS

29025. Rice. (F.D.C. No. 48834. S. No. 67-401 V.)

QUANTITY: 1,540 25-lb. bags, at Charleston Heights, S.C., in possession of Thomas & Howard Co.

SHIPPED: 1-30-63, from Stuttgart, Ark.

LIBELED: 4-5-63, E. Dist. S.C.

CHARGE: 402(a) (3)—contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 4-18-63. Consent—claimed by Thomas & Howard Co. Segregated; 92 bags destroyed.

29026. Rice. (F.D.C. No. 48639. S. No. 5-826 V.)

QUANTITY: 15 100-lb. bags, at Wilson, N.C., in possession of Southern Grain & Provision Co.

SHIPPED: 1-22-63, from Stuttgart, Ark.

LIBELED: 2-19-63, E. Dist. N.C.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 6-6-63. Default—denatured for use as animal feed.

29027. Rice. (F.D.C. No. 47337. S. Nos. 80-854/55 R.)

INFORMATION FILED: 9-7-62, W. Dist. La., against Imperial Rice Mill, Inc., Mermentau, La., and Eugene P. Sabatier, vice president and manager.

SHIPPED: 4-21-61, from Louisiana to Alabama.

LABEL IN PART: (Tag) "Vitamin and Mineral Fortified Rice 100 Pounds Net Packed By Imperial Rice Mills, Inc. Mermentau, La."

CHARGE: 402(a)(3)—contained insect fragments, insect larvae fragments and a rodent pellet; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 6-17-63. Corporation—\$500 fine suspended, and probation for 5 years; Sabatier—30 days in prison suspended, \$100 fine, and probation for 2 years.

29028. Rice. (F.D.C. No. 48993. S. Nos. 53-094/95 V.)

QUANTITY: 141 100-lb. bags, at Tacoma, Wash., in possession of West Coast Grocery Co.

SHIPPED: 1-15-63 and 4-15-63, from Houston, Tex., and Sacramento, Calif.

LIBELED: 5-28-63, W. Dist. Wash.

CHARGE: 402(a)(3)—contained bird excreta; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-8-63. Default—delivered to a public institution for use as animal feed.

29029. Rice. (F.D.C. No. 48128. S. Nos. 64-151/53 T.)

QUANTITY: 7 100-lb. bags, 8 bales, each containing 3 20-lb. bags, and 93 bales, each containing 30 1-lb. bags, at Darlington, S.C., in possession of Armory Wholesale Grocery Co., Inc.

SHIPPED: Between 2-24-62 and 8-6-62, from Houston, Tex.

LIBELED: 10-2-62, E. Dist. S.C.

CHARGE: 402(a)(3)—contained insects and insect larvae (all lots), and insect pupae (93-bale lot); and 402(a)(4) (all lots)—held under insanitary conditions.

DISPOSITION: 8-16-63. Default—delivered to a public institution for use as animal feed.

29030. Rice, dried Great Northern beans, and cornmeal. (F.D.C. No. 47369. S. Nos. 18-235/36 T, 20-447/52 T.)

INFORMATION FILED: 10-23-62, W. Dist. Okla., against Collins-Dietz-Morris Co., a corporation, Oklahoma City, Okla., and Tellus B. Hendrick, president, and Merle Fernberg, vice president.

ALLEGED VIOLATION: Between 9-22-61 and 1-19-62, the defendants caused quantities of rice, beans, and cornmeal to be placed in a building that was accessible to birds and rodents and caused the foods to be exposed to contamination by birds and rodents, which acts resulted in the foods being adulterated.

CHARGE: 402(a)(3)—contained bird excreta (1 count), and rodent urine (7 counts); and 402(a)(4)—held under insanitary conditions (all counts).

PLEA: Nolo contendere.

DISPOSITION: 1-8-63. \$800 fine against the corporation with each individual being made responsible to see that the fine was paid.

29031. Rice and soybeans. (F.D.C. No. 49019. S. Nos. 31-701/02 X.)

QUANTITY: 20 100-lb. bags of soybeans and 13 100-lb. bags of rice, at Alhambra, Calif., in possession of El Molino Mills.

SHIPPED: 3-10-63 and 3-14-63, from Hudson, Iowa, and Stuttgart, Ark.

LIBELED: 6-26-63, S. Dist. Calif.

CHARGE: 402(a)(3)—the soybeans contained rodent urine; and 402(a)(4)—both articles were held under insanitary conditions.

DISPOSITION: 7-22-63. Default—destruction.

29032. Wheat. (F.D.C. No. 48476. S. Nos. 27-439 V, 55-875 V.)

QUANTITY: 234,000 lbs., at Kansas City, Kans.

SHIPPED: 11-16-62 and 11-20-62, from Kansas City, Mo., by N. L. Johnson Grain Co.

LIBELED: 12-6-62, Dist. Kans.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 2-5-63. Consent—claimed by N. L. Johnson Grain Co., of Kansas City, Mo., and reconditioned; 8,440 lbs. destroyed.

29033. Wheat. (F.D.C. No. 48717. S. Nos. 57-932 V, 58-129 V.)

QUANTITY: 120,000 lbs., at Duluth, Minn.

SHIPPED: 2-12-63, from Karnak, N. Dak., by Karnak Grain Co.

LIBELED: 3-8-63, Dist. Minn.

CHARGE: 402(a)(2)(B)—when shipped, contained a mercurial compound, an unsafe pesticide chemical without a tolerance or exemption.

DISPOSITION: 3-19-63. Consent—claimed by Karnak Grain Co., Karnak, N. Dak., and reconditioned; 4,100 lbs. destroyed.

29034. Wheat. (F.D.C. No. 48747. S. No. 85-546 V.)

QUANTITY: 126,630 lbs. at Spokane, Wash.

SHIPPED: 4-1-63, from Rapelje, Mont., by Arnold Grain Co.

LIBELED: 4-12-63, E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 4-18-63. Consent—claimed by Arnold Grain Co., and denatured for use as animal feed.

29035. Wheat. (F.D.C. No. 48764. S. No. 85-548 V.)

QUANTITY: 100,000 lbs., at Spokane, Wash.

SHIPPED: 4-22-63, from Bonners Ferry, Idaho, by General Feed & Grain Co.

RESULTS OF INVESTIGATION: Examination showed that the article contained approximately 15 percent oats in bottom portion of the rail car containing the article.

LIBELED: 5-6-63, E. Dist. Wash.; amended libel 5-7-63.

CHARGE: 402(b)(2)—when shipped, oats had been substituted in part for wheat; and 403(b)—oats were offered for sale under the name of another food, namely, wheat.

DISPOSITION: 5-9-63. Consent—claimed by Atwood Larson Co., Portland, Oreg., and denatured for use as animal feed.

29036. Wheat. (F.D.C. No. 48774. S. No. 83-773 V.)

QUANTITY: 126,630 lbs., at Duluth, Minn.

SHIPPED: 4-25-63, from York, N. Dak., by C. J. Thoreson Elevator.

LIBELED: 5-13-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 5-22-63. Consent—claimed by William J. Thoreson, t/a C. J. Thoreson Elevator, and reconditioned.

29037. Wheat. (F.D.C. No. 48796. S. No. 83-633 V.)

QUANTITY: 120,000 lbs., at Minneapolis, Minn.

SHIPPED: 5-17-63, from Landa, N. Dak., by Landa Cooperative Elevator Co.

LIBELED: 6-3-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-12-63. Consent—claimed by Landa Cooperative Elevator Co., and denatured.

29038. Wheat. (F.D.C. No. 49008. S. No. 34-681 X.)

QUANTITY: 100,740 lbs., at Duluth, Minn.

SHIPPED: 5-23-63, from Rawson, N. Dak., by Rawson Cooperative.

LIBELED: 6-13-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-24-63. Consent—claimed by Farmers Elevator Co. of Rawson, Rawson, N. Dak., and converted into animal feed.

29039. Wheat. (F.D.C. No. 49001. S. No. 51-221 X.)

QUANTITY: 41,150 lbs., at Othello, Wash.

SHIPPED: 4-30-63, from Plains, Mont., by Stephens Grain Co.

LIBELED: 6-7-63, E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-24-63. Consent—claimed by Coast Trading Co., Spokane, Wash., and converted into animal feed.

29040. Wheat. (F.D.C. No. 49015. S. No. 35-081 X.)

QUANTITY: 70,900 lbs., at Minneapolis, Minn.

SHIPPED: 6-10-63, from Osceola, S. Dak., by Farmers Cooperative Association.

LIBELED: 6-21-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-26-63. Consent—claimed by Farmers Cooperative Association, and denatured.

29041. Donut mixes. (F.D.C. No. 48492. S. No. 45-844 V.)

QUANTITY: 36 100-lb. bags and 7 80-lb. bags of Donut mixes, at St. Louis, Mo., in possession of R & B Warehouse.

SHIPPED: In June 1962, from Lockport, N.Y.

LIBELED: 12-18-63, E. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent deposits; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-6-63. Default—delivered to a public institution for use as animal feed.

29042. Donut mixes. (F.D.C. No. 48992. S. Nos. 7-996/97 V.)

QUANTITY: 33 100-lb. bags, at Southington, Conn.

SHIPPED: On an unknown date in November 1961, and on 11-1-62, from Buffalo, N.Y.

LIBELED: 6-5-63, Dist. Conn.

CHARGE: 402(a)(3)—contained insects, insect larvae, insect fragments, insect excreta, and insect webbing while held for sale.

DISPOSITION: 8-17-63. Default—delivered to a Government institution for use as animal feed.

29043. Donut mix, Sweet Doh Base, and flour. (F.D.C. No. 48371. S. Nos. 20-265 V, 20-267/68 V.)

QUANTITY: 3 100-lb. bags of Donut mix, 27 100-lb. bags of Sweet Doh Base, and 40 100-lb. bags of flour at Houston, Tex., in possession of Morris Wholesale Co.

SHIPPED: Between 1-24-62 and 9-4-62, from Oklahoma City, Okla.

LIBELED: On or about 11-23-62, S. Dist. Tex.

CHARGE: 402(a)(3)—contained insects (all lots) and insect larvae and cast skins (Donut mix and flour); and 402(a)(4)—(sweet doh base and flour) held under insanitary conditions.

DISPOSITION: 1-31-63. Default—delivered to a public institution for use as animal feed.

FEEDS AND GRAINS

29044. Alfalfa meal. (F.D.C. No. 47331. S. No. 15-405 T.)

INFORMATION FILED: 12-28-62, N. Dist. Ind., against K-Sall Termite & Pest Control Co., a partnership, Richmond, Ind., and Paul E. Spicer, a partner.

ALLEGED VIOLATION: Between 6-20-61 and 9-5-61, while quantities of alfalfa meal were being held for sale after shipment in interstate commerce, the defendants caused a quantity of a poison known as "1080" (sodium fluoroacetate) to be maintained in unprotected, unsecured, open paper cups proximate to the article under conditions whereby the article may have become contaminated with the poison, which acts resulted in the article being adulterated.

CHARGE: 402(a)(4)—the article was held under insanitary conditions whereby it may have been rendered injurious to health.

PLEA: Guilty.

DISPOSITION: 1-31-63. Each defendant fined \$250.

29045. Animal feed. (F.D.C. No. 45656. S. No. 7-044 R.)

INFORMATION FILED: 8-15-61, N. Dist. N.Y., against Elmore Milling Co., Inc., Oneonta, N.Y.

SHIPPED: Between 10-13-59 and 4-13-60, from Oneonta, N.Y., to Fairfield, Vt.

LABEL IN PART: (Bag tag) "100 Lbs. Net Ingredients Wheat Standard Middlings, Corn Meal, Corn Bread Distillers Solubles, * * * Analysis Min. Crude Protein 15% Min. Crude Fat 3½% Max. Crude Fiber 3% Manufactured by Elmore Milling Company, Inc. Oneonta, New York Elmore Hog Ration."

CHARGE: 402(a)(2)(A)—when shipped, the article contained an added deleterious substance, namely, arsanilic acid, which was unsafe within the meaning of 406 in that it was not required in the production of the food and could be avoided by good manufacturing practice.

The information alleged also that three other articles, namely, Elmore Chix-saver, Elmore Complete Market Egg Ration (active drug ingredient: arsanilic acid), and Elmore Complete Market Egg Ration (active drug ingredient: 3-nitro-4 hydroxyphenylarsonic acid), were adulterated or misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7168.

PLEA: Guilty.

DISPOSITION: 12-6-61. \$150 fine on the charge involving a food; \$750 total fine.

29046. Shelled feed corn. (F.D.C. No. 48632. S. Nos. 16-001/02 V.)

QUANTITY: 2,010 bushels, at Chrisman, Ill.

SHIPPED: Between 10-15-62 and 10-17-62, from Rockville, Ind., by Funk Bros. Seed Co.

RESULTS OF INVESTIGATION: Examination showed that 475 bushels of the article contained approximately 915 parts per million of captan, and 1,535 bushels of the article contained approximately 555 parts per million of captan. The article was coated with a red dye, and had been originally processed by the shipper for seed corn use. However, the article constituted surplus stocks and had been diverted to feed use, and failed to bear the shipper's customary tags for seed corn which read, "Do not use for Food, Feed or Oil purposes."

LIBELED: 2-12-63, E. Dist. Ill.

CHARGE: 402(a)(2)(B)—when shipped, the article contained a pesticide chemical, namely, captan, which was unsafe within the meaning of 408(a), since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on feed corn had been prescribed by regulations.

DISPOSITION: 3-8-63. Default—destruction.

FISH AND SHELLFISH

29047. Frozen catfish. (F.D.C. No. 48767. S. Nos. 87-063/64 V.)

QUANTITY: 259 25-lb. cases, at Hot Springs, Ark.

SHIPPED: Between 1-15-63 and 2-28-63, from Rosedale, La., by J. F. Sexton & Sons Fish Co.

LABEL IN PART: (Ctn.) "SO. LA. FISH."

LIBELED: 5-7-63, W. Dist. Ark.

CHARGE: 402(a)(3)—contained decomposed fish when shipped.

DISPOSITION: 6-19-63. Default—destruction.

29048. Frozen perch fillets. (F.D.C. No. 48111. S. Nos. 78-010/11 T.)

QUANTITY: 16,100 1-lb. ctns., and 216 10-lb. ctns., at Rockland, Maine.

SHIPPED: These fillets were from fish caught by the fishing vessels "Brighton" and "Dorothy M. O'Hara" in the waters of the Atlantic Ocean outside the territorial limits of Maine, and landed at Rockland, Maine, on 8-21-62 and 8-22-62.

LIBELED: 9-17-62, Dist. Maine.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 10-3-62. Consent—claimed by F. J. O'Hara & Sons, Inc., Rockland, Maine. Reconditioned; 2,310 lbs. destroyed.

29049. Frozen haddock fillets. (F.D.C. No. 49256. S. Nos. 7-570/71 X.)

QUANTITY: 225 5-lb. ctns., and 48 cases, each containing 10 5-lb. ctns., at Boston, Mass.

SHIPPED: These fillets were from fish caught by the fishing vessels "Baby Rose" and "Caracara" in the waters of the Atlantic Ocean outside the territorial limits of Massachusetts and landed at Boston, Mass., on 8-15-63.

LIBELED: 9-9-63, Dist. Mass.

CHARGE: 402(a)(3)—contained decomposed fish fillets when shipped.

DISPOSITION: 10-1-63. Consent—ordered destroyed or donated to a public or charitable institution for use as animal feed.

29050. Whitefish fillets and trout fillets. (F.D.C. No. 49278. S. Nos. 25-841/42 X.)

QUANTITY: 38 75-lb. cases of whitefish fillets, and 19 cases, each containing 4 15-lb. ctns. of trout fillets, at Toledo, Ohio.

SHIPPED: 6-1-63, from Detroit, Mich., by J. Kozloff Fish Distributors, Inc.

LABEL IN PART: (Case) "Whitefish Fillets From J. Kozloff Fish Dist. Detroit, Mich., * * * Product of Canada," and (ctn.) "Glazed * * * Trout Fillets 16/20 Product of Canada."

LIBELED: 8-14-63, N. Dist. Ohio.

CHARGE: 402(a)(3)—contained decomposed fish fillets when shipped.

DISPOSITION: 9-13-63. Default—destruction.

29051. Frozen breaded shrimp. (F.D.C. No. 49200. S. No. 736 X.)

QUANTITY: 198 cases, each containing 12 9-oz. pkgs., at Atlanta, Ga.

SHIPPED: 6-11-63, from Tampa, Fla., by Singleton Packing Corp.

LABEL IN PART: (Pkg.) "Product of U.S.A. Singleton Brand 21 Shrimp In the Basket * * * Ingredients * * * Packed by Singleton Packing Corp., Tampa, Florida."

LIBELED: 7-26-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 10-18-63. Default—destruction.

29052. Frozen breaded shrimp. (F.D.C. No. 48788. S. No. 80-381 V.)

QUANTITY: 13 cases, each containing 12 9-oz. baskets, at Hudsonville, Mich.

SHIPPED: 3-25-63, from Tampa, Fla., by Singleton Packing Corp.

LABEL IN PART: (Insert label) "Singleton Brand 21 Shrimp in the Basket * * * Packed by Singleton Packing Corp., Tampa, Florida."

LIBELED: 5-23-63, W. Dist. Mich.; amended libel 5-24-63.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 6-14-63. Consent—delivered to Government institutions for use as animal feed.

29053. Frozen shrimp. (F.D.C. No. 48726. S. No. 35-732 V.)

QUANTITY: 63 cases, each containing 10 5-lb. ctns., at Minneapolis, Minn.

SHIPPED: 1-8-63, from Tucson, Ariz., by Crest Importing Co., Inc.

LABEL IN PART: (Ctn.) "Compass Brand Froz. Fresh Shrimp Packed Exclusively for Crest Importing Co., Inc., San Diego, California."

LIBELED: 3-22-63, Dist. Minn.

CHARGE: 402(a)(3)—contained decomposed shrimp when shipped.

DISPOSITION: 5-16-63. Consent—claimed by Crest Importing Co., Inc., San Diego, Calif., for re-exportation.

29054. Frozen shrimp. (F.D.C. No. 48773. S. No. 11-710 V.)

QUANTITY: 97 cases, each containing 10 5-lb. ctns., at Pittsburgh, Pa.

SHIPPED: 1-8-63, from Tucson, Ariz., by Crest Importing Co., Inc.

LABEL IN PART: (Ctn.) "Compass Brand Frozen Fresh Shrimp Packed Exclusively For Crest Importing Company, Inc., San Diego, California * * * Product of Mexico."

LIBELED: 5-13-63, W. Dist. Pa.

CHARGE: 402(a)(3)—contained decomposed shrimp when shipped.

DISPOSITION: 7-15-63. Consent—claimed by Crest Importing Co., Inc., for export to original supplier in Mazatlan, Mex.

FRUITS AND VEGETABLES

CANNED FRUIT

29055. Canned apricots and canned fruit cocktail. (F.D.C. No. 48162. S. Nos. 28-676 R, 49-007 R, 42-427 T, 46-003 T.)

INFORMATION FILED: 5-26-63, N. Dist. Calif., against United States Products Corp., Ltd., San Jose, Calif.

SHIPPED: Between 1-19-61 and 8-19-61, from San Jose, Calif., to Sioux Falls, S. Dak., Denver, Colo., King of Prussia, Pa., and St. Louis, Mo.

LABELS IN PART: (Cans) "Golden Valley Net Contents 1 Lb. 14 Ozs. Mixed Pieces of Irregular Sizes and Shapes In Heavy Syrup Unpeeled Apricots (Graphic matter—Vignettes depicting only whole unbroken apricots)," "Very Ripe Net Weight 1 Lb. 14 Oz. (850 Gms.) Yacht Club Whole Unpeeled Apricots in Heavy Syrup," "Valley Forge Net Weight 1 Lb. 13 Oz. Whole Unpeeled Apricots in Light Syrup," and "Tom Boy Fruit Cocktail in Heavy Syrup Contents 1 Lb. 1 Oz."

CHARGE: 402(a)(3)—when shipped, the canned apricots labeled "whole unpeeled apricots in heavy syrup" contained moldy and rotten pieces of apricot;

403(a)—vignettes depicting only whole unbroken apricots were false and misleading as applied to the canned apricots labeled “mixed pieces of irregular sizes and shapes” since the article consisted in part of apricot pits, disintegrated apricots, and crushed broken apricots; 403(g)(1)—the canned apricots labeled “mixed pieces of irregular sizes and shapes” failed to conform to the definition and standard of identity for such canned apricots, since the article was prepared in part from apricots past maturity, and was not pitted; 403(g)(2)—the canned apricots labeled “mixed pieces of irregular sizes and shapes” failed to bear the words showing the optional ingredients used, immediately and conspicuously preceding or following the name “apricots” wherever the name appeared on the label so conspicuously as to be easily seen under the customary conditions of purchase; 403(a)—the canned apricots labeled “whole unpeeled apricots in light syrup” bore the label statement “In Light Syrup” which was false and misleading since the article was packed in a medium designated as “Slightly Sweetened Water”; 403(g)(2)—the label of the canned apricots labeled “whole apricots in light syrup” did not bear the correct common name of the optional packing medium required by the definition and standard of identity for the article since the article was packed in “Slightly Sweetened Water”; and 403(e)(2)—the canned fruit cocktail failed to bear a label containing an accurate statement of quantity of contents since the label statement “Contents 1 Lb. 1 Oz.” was inaccurate.

PLEA: Guilty.

DISPOSITION: 8-30-63. \$3,250 fine.

29056. Glaced fruit (2 seizure actions). (F.D.C. Nos. 46539, 46766. S. Nos. 9-076 T, 9-587 T.)

QUANTITY: 52 35-lb. cans at Perry, N.Y.

SHIPPED: 10-14-61 and 11-4-61, from North East, Pa., by Ohio Fruit Products Co., Inc.

LABEL IN PART: “Garden of Eden Glaced Diced Fruit Red Citron * * *
Packed By Ohio Fruit Products Co., Inc. North East, Pa.”

LIBELED: 11-21-61 and 12-4-61, W. Dist. N.Y.

CHARGE: 402(a)(3)—contained *Drosophila* flies and insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 2-7-62. Consent—claimed by Ohio Fruit Products Co., Inc., and destroyed.

FRESH FRUIT

29057. Fresh blueberries. (F.D.C. No. 47651. S. No. 7-357 X.)

QUANTITY: 39 crates, each containing 16 1-qt. boxes, at Boston, Mass.

SHIPPED: 8-1-63, from Manchester, N.H., by Flavor Fresh Brand Packaged Vegetables.

LIBELED: 8-2-63, Dist. Mass.

CHARGE: 402(a)(3)—contained maggots.

DISPOSITION: 9-9-63. Default—destruction.

29058. Oranges. (F.D.C. No. 48716. S. Nos. 27-518/19 V.)

QUANTITY: 117 cases, each containing approximately 163 oranges, at Kansas City, Mo.

SHIPPED: 1-26-63 and 2-14-63, from Fullerton, Calif., by Blue Goose Growers, Inc.

LABEL IN PART: (Case) "Signal Blue Goose Packed by Western Fruit Growers Packing Company, Redlands, California."

LIBELED: 3-5-63, W. Dist. Mo.

CHARGE: 402(a)(3)—the article was unfit for food due to freeze damage when shipped.

DISPOSITION: 3-12-63. Consent—claimed by Blue Goose Growers, Inc., and Western Trust Growers Packing Co. Segregated; approximately 202 cases of the 236 cases actually seized were processed for juice and 75 lbs. were destroyed.

MISCELLANEOUS FRUIT PRODUCTS

29059. Apple cider. (F.D.C. No. 46679. S. No. 42-526 R.)

INFORMATION FILED: 11-7-62, N. Dist. Calif., against George Blaufuss, Jr., Napa, Calif.

SHIPPED: 11-1-60, from Napa, Calif., to Hilo, Hawaii.

LABEL IN PART: (Ctn.) "Saxon Half Gallons Pure Apple Cider George Blaufuss & Son, Napa, Calif."

CHARGE: 402(a)(3)—when shipped, the article consisted in part of a decomposed substance by reason of the use of decomposed apples in its manufacture and in part of a filthy substance by reason of the use of wormy apples in its manufacture; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 3-13-63. Probation for 1 year.

29060. Apple juice. (F.D.C. No. 47893. S. No. 34-269 R.)

INFORMATION FILED: 11-27-62, S. Dist. N.Y., against Dall Vechia & Son Cider Mill, a partnership, Highland, N.Y., and Joseph Dall Vechia, Sr., and Joseph Dall Vechia, Jr., partners.

ALLEGED VIOLATIONS: The defendants gave to a firm engaged in the business of shipping apple juice and products made from apple juice in interstate commerce, a continuing guaranty that each shipment of apple juice made by the defendant would not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act. Thereafter, on 10-27-60, the defendants caused a quantity of apple juice which was adulterated to be delivered to the holder of the guaranty.

CHARGE: 402(a)(3)—consisted of a decomposed substance by reason of its manufacture from rotten apples and of a filthy substance by reason of the presence of insects and insects parts; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 1-10-63. Partnership—sentence suspended; individual defendants—\$500 fine each.

VEGETABLES AND VEGETABLE PRODUCTS*

29061. Dried beans and dried peas. (Inj. No. 440.)

COMPLAINT FOR INJUNCTION FILED: 9-4-62, Dist. Idaho, against John F. Grisez, t/a Valley Bean & Grain Co., Murtaugh, Idaho, Stephen J. Perkins, manager

*See also Nos. 29030, 29031.

of the Valley Bean & Grain Co., Magic Valley Bean Co., Inc., Kimberly, Idaho, Donald L. Berger and Francis J. Lewis, president and vice president, respectively, of the corporation, and Cleo H. Barth, t/a C. H. Barth Co., Twin Falls, Idaho.

CHARGE: The complaint alleged that John F. Grisez and Stephen J. Perkins were engaged in processing and storing at the plant of the Valley Bean & Grain Co., Murtaugh, Idaho, and in delivering to the Magic Valley Bean Co., Inc., and to Cleo H. Barth for shipment into interstate commerce, and in shipping in interstate commerce, pursuant to orders received from such corporations and Cleo H. Barth, beans and peas for human consumption which were adulterated within the meaning of 402(a)(3) because of the presence of rodent urine and bird excrement, and within the meaning of 402(a)(4) because they had been processed and held at the plant of the Valley Bean & Grain Co. under insanitary conditions.

It was alleged further that the insanitary conditions of the Valley Bean & Grain Co.'s plant resulted from and consisted of the presence of the following:

a. In the Southwest Warehouse Building—Several mice (both alive and dead); thousands of mouse pellets throughout the warehouse, including an estimated average of 25 per 6 square inches of floor space along the wall-floor junction, and thousands of mouse pellets on the bags of beans, peas, and seed wheat stored in the warehouse; and bags of beans and peas containing mouse nests, holes gnawed by mice, and rodent urine.

b. In the East Warehouse—Several mice (both alive and dead), live sparrows, numerous mouse pellets, including an estimated average of 1 pellet per 5 linear feet along the wall-floor junction, and approximately 50 pellets in a 2-square-foot area on each side of the loading doors; bags of food containing rodent urine and bird excrement; and Tribolium insects in the elevator section of the warehouse.

The complaint alleged further that John F. Grisez, Stephen J. Perkins, the Magic Valley Bean Co., Inc., Donald L. Berger, Francis J. Lewis, and Cleo H. Barth caused the introduction and delivery for introduction into interstate commerce of beans and peas which had been processed and held at the Valley Bean & Grain Co.'s plant and which were adulterated as described above.

DISPOSITION: 9-4-62. The defendants, having consented to the entry of a decree without admitting the allegations of adulteration, the court entered a decree of permanent injunction which provided as follows:

(1) That John F. Grisez and Stephen J. Perkins be enjoined from directly or indirectly causing the introduction and delivery for introduction into interstate commerce, and more particularly from delivering or causing to be delivered to persons in the State of Idaho known to be engaged in the distribution of beans and peas in interstate commerce, beans and peas for human consumption and any similar articles of foods processed or held at the Valley Bean & Grain Co.'s plant at Murtaugh, Idaho, unless and until:

(a) such plant is thoroughly cleaned and renovated and rendered suitable for use in connection with the processing and storing of beans and peas for human consumption and any similar article of food, to wit, unless and until all rodent, bird, and insect filth is removed from the plant; all rodent, bird, and insect infestation in and about the plant is eliminated; the means of ingress and egress of the plant by rodents, birds, and insects are closed; and any similar insanitary conditions are eliminated; and

(b) all of the beans and peas which are on hand at the plant at the time the plant is cleaned, renovated, and rendered suitable for the processing and storing of beans and peas for human consumption, are destroyed, denatured for use as animal feed or for use as seed, or cleaned or otherwise brought into compliance with the law under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and all expenses of such supervision being paid by John F. Grisez and Stephen J. Perkins.

(2) That the Magic Valley Bean Co., Inc., Donald L. Berger, Francis J. Lewis, and Cleo H. Barth be enjoined from directly or indirectly causing to be introduced and delivered for introduction into interstate commerce, and more particularly from delivering or causing to be delivered to persons in the State of Idaho known to be engaged in the distribution of beans and peas in interstate commerce, beans and peas for human consumption and any similar articles of food which have been processed or held at the plant of the Valley Bean & Grain Co. at Murtaugh, Idaho, unless and until all of the beans and peas which are held by such defendants at any place other than the Valley Bean & Grain Co.'s plant are denatured for use as animal feed or for use as seed or cleaned or otherwise brought into compliance with the law under the supervision of the Food and Drug Administration with all expenses of such supervision being paid by such defendants.

(3) That the defendants, John F. Grisez, Stephen J. Perkins, Magic Valley Bean Co., Inc., Donald L. Berger, Francis J. Lewis, and Cleo H. Barth be enjoined from directly or indirectly causing to be introduced and delivered for introduction into interstate commerce and more particularly from delivering or causing to be delivered to persons in the State of Idaho known to be engaged in the distribution of beans and peas in interstate commerce, beans and peas for human consumption and any similar articles of food received, processed, or stored by the defendants, which food is adulterated within the meaning of 402(a) (3) and (4).

29062. Dried Great Northern beans. (F.D.C. No. 49251. S. No. 392 X.)

QUANTITY: 22 100-lb. bags at Winston-Salem, N.C.

SHIPPED: 11-28-62, from Denver, Colo.

LIBELED: 9-5-63, M. Dist. N.C.

CHARGE: 402(a) (3)—contained rodent urine while held for sale.

DISPOSITION: 9-27-63. Default—destruction.

29063. Navy beans. (F.D.C. No. 48836. S. No. 67-506 V.)

QUANTITY: 130 100-lb. bags, at Atlanta, Ga.

SHIPPED: 3-1-63, from Lowell, Mich.

LIBELED: 4-9-63, N. Dist. Ga.

CHARGE: 402(a) (3)—contained rodent urine while held for sale.

DISPOSITION: 5-14-63. Consent—claimed by H. C. Runcinan Co., Lowell, Mich. Segregated; 47 100-lb. bags destroyed.

29064. Navy beans (2 seizure actions). (F.D.C. No. 48504. S. Nos. 46-179 V, 46-180 V.)

QUANTITY: 501 100-lb. bags, at Moberly, Mo., in possession of Temple-Stephens Co., Inc.

SHIPPED: 10-2-62 and 10-31-62, from Flushing and Alicia, Mich.

LIBELED: 1-7-63, E. Dist. Mo.

CHARGE: 402(a) (3)—contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 2-26-63. Consent—claimed by Temple-Stephens Co., Inc. Segregated; 31,800 lbs. denatured for use as animal feed.

29065. Dried yellow split peas and green split peas, whole green peas, and navy beans. (F.D.C. No. 48635. S. Nos. 3-339/42 V.)

QUANTITY: 6 25-lb. bags of yellow split peas, 7 25-lb. bags of green split peas, 14 25-lb. bags of whole green peas, and 26 25-lb. bags of navy beans, at Norfolk, Va., in possession of Peltz Bros., Inc.

SHIPPED: Between 10-16-61 and 11-21-62, from Saginaw, Mich., and Denver, Colo.

LIBELED: 2-11-63, E. Dist. Va.

CHARGE: 402(a) (3)—the split peas contained rodent excreta, all articles contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 3-21-63. Default—destruction.

29066. Soybeans. (F.D.C. No. 48785. S. Nos. 45-783/4 V.)

QUANTITY: 207,580 lbs., at Memphis, Tenn.

SHIPPED: 5-13-63 and 5-14-63, from Patterson, Ark., by Farmers Granary, Inc.

LIBELED: 5-23-63, W. Dist. Tenn.

CHARGE: 402(a) (1)—when shipped, contained an added poisonous and deleterious substance, namely, crotalaria seeds, which may have rendered the article injurious to health.

DISPOSITION: 5-23-63. Consent—claimed by Cook Grains, Inc., Memphis, Tenn., and reconditioned.

29067. Green lima beans. (F.D.C. No. 48857. S. No. 20-056 V.)

QUANTITY: 532 100-lb. bags, at Elsa, Tex., in possession of Elsa Canning Co.

SHIPPED: 2-28-63, from Crows Landing, Calif.

LIBELED: 4-22-63, S. Dist. Tex.

CHARGE: 402(a) (3)—contained rodent urine and rodent excreta pellets; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 5-27-63. Consent—claimed by Elsa Canning Co., Elsa, Tex. Reconditioned; 250 lbs. destroyed.

29068. Dried beans, poppyseed, and caraway seed. (F.D.C. No. 48570. S. Nos. 9-308/9 V, 9-311 V.)

INFORMATION FILED: 6-13-63, N. Dist. N.Y., against E. Simon Damsky Sons, Inc., Utica, N.Y., and Hymen L. Damsky, treasurer, and Joseph Damsky, president.

ALLEGED VIOLATIONS: Between 10-14-60 and 9-25-62, the defendants caused quantities of beans, poppyseed and caraway seed while held for sale after shipment in interstate commerce, to be held in a building that was accessible to insects and caused the articles to be exposed to contamination by insects which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained insects and insect filth; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 7-26-63. Corporation—\$252 fine; each individual—\$252 fine.

29069. Canned pinto beans. (F.D.C. No. 48661. S. No. 22-277 V.)

QUANTITY: 51 cases, each containing 24 15½-oz. cans, at Roswell, N. Mex.

SHIPPED: 11-28-62, from Denton, Tex., by Whitson Food Products Co.

LABEL IN PART: (Can) "Camp Fire Brand Pinto Beans * * * Packed by Whitson Food Products Co., Denton, Texas."

LIBELED: 3-5-63, Dist. N. Mex.

CHARGE: 402(a)(1)—when shipped, the article contained an added deleterious substance, namely, burrs with pointed, sharp, thorn-like barbs, which might render it injurious to health.

DISPOSITION: 4-12-63. Default—destruction.

29070. Canned green beans. (F.D.C. No. 49205. S. Nos. 28-810/11 X.)

QUANTITY: 150 cases, each containing 24 15½-oz cans, at Muncie, Kans.

SHIPPED: 5-31-63, from Kansas City, Mo., by Kay-Gee Sales Corp.

LABEL IN PART: (Can) "Linda Lee Cut Green Beans * * * Distributed by J. M. Werling & Son Warrensburg, Missouri."

LIBELED: 7-30-63, Dist. Kans.

CHARGE: 402(a)(3)—contained a decomposed substance when shipped.

DISPOSITION: 10-2-63. Default—destruction.

29071. Dried corn. (F.D.C. No. 49057. S. No. 25-581 X.)

QUANTITY: 38 50-lb. bags, at Avery, Ohio.

SHIPPED: 6-22-63, from Bluffton, Ind., by Pretzel Bitz Corp.

LABEL IN PART: (Tag) "Corn Open Pollinated Stowells Evergreen 13172 Ferry-Morse Seed Co."

LIBELED: 7-26-63, N. Dist. Ohio.

CHARGE: 402(a)(3)—contained insect larvae and pupae when shipped; and 402(a)(4)—held under insanitary conditions at shipper's warehouse.

DISPOSITION: 8-26-63. Default—destruction.

OILS AND FATS

29072. Table and cooking oil. (F.D.C. No. 48407. S. No. 40-649 V.)

QUANTITY: 46 cases, each containing 6 1-gal. cans, at Kearny, N.J.

SHIPPED: 10-15-62, from Brooklyn, N.Y., by Esposito Bros.

LABEL IN PART: (Can) "Violetta Brand Unsaturated or Hydrogenated * * * A Blend of 75% Pure Vegetable Oil Enriched with 25% Imported Olive Oil Esposito Bros. Brooklyn, N.Y. * * * Contents: Corn or Cottonseed - Peanut and Olive Oil."

RESULTS OF INVESTIGATION: Examination showed that the article was composed chiefly of cottonseed oil and a small amount of olive oil and an artificial olive oil flavor, and contained little or no corn oil or peanut oil.

LIBELED: 12-10-62, Dist. N.J.

CHARGE: 402(b)(4)—when shipped, artificial olive oil flavor had been added to the article or mixed or packed therewith so as to make it appear better or of greater value than it was; 403(a)—the label statement “Unsaturated or Hydrogenated” was false and misleading, since it was ambiguous, and the label statement “Contents: Corn or Cottonseed—Peanut and Olive Oil” was false and misleading, since the article contained little or no corn oil and no more than a trace of peanut oil; 403(i)(2)—the label of the article failed to bear the common or usual name of each ingredient, since the artificial olive oil flavor, ethyl butyrate, was not declared; and 403(k)—the article contained an artificial flavoring, namely, ethyl butyrate, and its labeling failed to state that fact.

DISPOSITION: 2-18-63. Consent—claimed by Esposito Bros., Brooklyn, N.Y., and relabeled.

29073. Table and cooking oil. (F.D.C. No. 48775. S. No. 11-291 V.)

QUANTITY: 145 cases, each containing 6 cans, at Buffalo, N.Y., in possession of Limco Importers, Inc.

SHIPPED: 2-9-63 and 2-26-63, from Opelousas, La., and New York, N.Y.

LABEL IN PART: (Can) “Net Contents One U.S. Gallon 128 Oz. Regina Brand * * * Blend of Oil Consisting of 90% Corn Oil and or cottonseed oil 10% Pure Olive Oil Distributed by Linda Food Products, Buffalo, New York.”

RESULTS OF INVESTIGATION: The article was blended and packed by the dealer from bulk oils. The article was approximately 2 percent short volume.

LIBELED: 5-16-63, W. Dist. N.Y.

CHARGE: 403(a)—while held for sale, the label statement “90% Corn Oil and or Cottonseed Oil” was misleading in that it was ambiguous and failed to accurately inform consumers of the ingredients present in the article; and 403(e)(2)—the article failed to bear a label containing an accurate statement of quantity of contents, since the label statement “128 Oz.” was inaccurate.

DISPOSITION: 7-15-63. Consent—claimed by Limco Importers, Inc., Buffalo, N.Y., for relabeling.

29074. Olive oil. (F.D.C. No. 48853. S. No. 43-122 V.)

QUANTITY: 1,776 cans, at Philadelphia, Pa.

SHIPPED: 8-10-62, from Imperia, Italy, by Pietro Salvo.

LABEL IN PART: (Can) “Rosa Brand Pure Olive Oil 100% Pure Italian Olive Oil * * * Net Contents One Full Half Pint Packed in Italy * * * For Rosa Food Product Co. * * * Philadelphia, Pa.”

RESULTS OF INVESTIGATION: Examination showed that the article was 2.25 percent short in volume.

LIBELED: 5-1-63, E. Dist. Pa.

CHARGE: 403(e)(2)—when shipped, the label of the article failed to bear a label containing an accurate statement of the quantity of contents.

DISPOSITION: 6-26-63. Consent—claimed by Rosa Food Products Co., of Philadelphia, Pa., and relabeled.

29075. Safflower shortening. (F.D.C. No. 47980. S. No. 22-393 T.)

QUANTITY: 70 cases, each containing 12 3-lb. cans, at Salt Lake City, Utah.

SHIPPED: 6-14-62, from Los Angeles, Calif., by San-Val Distributing Co.

LABEL IN PART: (Can) "GOLD-N-SWEET SAFFLOWER SHORTENING HIGHEST IN POLY-UNSATURATES THE MAJOR PORTION IN LIQUID SAFFLOWER OIL * * * MFG. BY VEGETABLE OIL PRODUCTS COMPANY, INC., WILMINGTON, CALIF."

ACCOMPANYING LABELING: Four looseleaf portfolios containing pieces of promotional material relating to the article and references to the book "Calories Don't Count" by Herman Taller, M.D., and other books; and a booklet entitled "Pocket Guide to Poly-Unsaturates."

LIBELED: 8-23-62, Dist. Utah.

CHARGE: 403(a)—when shipped, the name "Safflower Shortening" and statements in the label of the article which represented the article to be a shortening made entirely from safflower oil were false and misleading as applied to an article consisting of safflower oil and hydrogenated cottonseed oil; and, in addition, the can label and accompanying labeling contained false and misleading representations that the article was adequate and effective to prevent atherosclerosis, heart attacks and strokes, to control blood cholesterol, reduce body weight, stay fit and active, and improve health and vitality; and 403(i) (2)—the label failed to bear the common or usual name of each ingredient, since "all vegetable shortening" is not the common or usual name of the ingredients safflower oil and hydrogenated cottonseed oil.

DISPOSITION: 3-4-63. Default—article delivered to a State institution, and accompanying labeling destroyed.

POULTRY

29076. Poultry. (Inj. No. 338.)

COMPLAINT FOR INJUNCTION FILED: 6-11-58, Dist. Del., against Eagle Poultry Co., Inc., and Eagle Poultry Packers, Inc., Frankford, Del., and Harry Landes, president of the corporation.

CHARGE: The complaint alleged that the defendants were buying, slaughtering, preparing, packing, dressing, freezing, selling and distributing poultry consisting of New York dressed, eviscerated, and cut-up turkeys and chickens, and causing to be introduced into interstate commerce, frozen poultry which was adulterated as follows: 402(a) (3)—the frozen poultry consisted in part of a filthy substance by reason of the presence therein and thereon of slimy and tacky skin, stale, rancid odor on skin and in body cavities, putrid hip joints, sour joints, missing portions of "whole" birds, bruised and mutilated New York dressed birds, fecal matter oozing from vents or from torn viscera in body cavities, feathers, dirt, and extraneous matter smeared on flesh, and stale or rancid livers, necks, hearts and gizzards.

The complaint alleged further that the defendants had on hand 108 uncoded cases of frozen poultry, and that such poultry, which in the usual and ordinary course of business would be shipped in interstate commerce, constituted a menace to interstate commerce in that it consisted in part of a filthy substance as described above.

DISPOSITION: On 6-12-58, a temporary restraining order was entered against the defendants enjoining the defendants from causing the introduction into interstate commerce of (a) frozen poultry which was adulterated as alleged in the complaint; and (b) any of the 108 uncoded cases of frozen poultry described in the complaint unless and until all of such poultry was destroyed.

denatured for use as animal food, or cleaned and otherwise reconditioned so as to be in compliance with the law.

An order to show cause why a preliminary injunction should not issue was also entered against the defendants on 6-12-58, with a hearing set for 6-20-58. Thereafter, by stipulation of the parties, the temporary restraining order was extended to 7-3-58, and the hearing set for that date upon the prayer for preliminary injunction and prayer for permanent injunction. It was also stipulated that the 108 uncoded cases of poultry be examined by the Food and Drug Administration and the unfit portion destroyed. On 7-1-58, such poultry was segregated, resulting in the destruction of 60 full cases and parts of 5 cases.

The hearing on the injunction began on 7-3-58, but was not completed. Instead an agreement was reached by the parties to enter into a stipulation that the hearing be continued to 1-15-59, unless application should be made by either party for resumption of trial prior to that date and if no application be made on or before 1-15-59, a stipulation of dismissal be entered; and that the temporary restraining order should be continued in effect against Eagle Poultry Co., Inc., and Eagle Poultry Packers, Inc., until the further order of the court or until the stipulation of dismissal was entered into. On 1-29-59, pursuant to the stipulation of the parties, an order of dismissal was entered by the court.

29077. Canned chicken. (F.D.C. No. 49284. S. No. 27-933 X.)

QUANTITY: 21 cases, each containing 12 3-lb. 4-oz. cans, at Davenport, Iowa.

SHIPPED: 2-21-63, from Quincy, Ill.

LIBELED: 8-26-63, S. Dist. Iowa.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 9-4-63. Consent—destruction.

29078. Canned chicken. (F.D.C. No. 49305. S. No. 26-669 X.)

QUANTITY: 480 3-lb. 4-oz. cans, at Toledo, Ohio.

SHIPPED: 3-18-63, from Quincy, Ill.

LIBELED: 9-11-63, N. Dist. Ohio.

CHARGE: 402(a)(3)—contained decomposed chicken while held for sale.

DISPOSITION: 10-10-63. Default—destruction.

29079. Frozen chicken. (F.D.C. No. 49312. S. No. 46-421 X.)

QUANTITY: 312 boxes, containing a total of 13,165 lbs., at Springfield, Ill.

SHIPPED: On an unknown date, from Nacogdoches, Tex., by HLH Products Co.

LABEL IN PART: (Box) "HLH Fowl without Giblets * * * Packed by HLH Products General Office Dallas, Texas."

LIBELED: 9-11-63, S. Dist. Ill.

CHARGE: 402(a)(3)—contained decomposed chickens when shipped.

DISPOSITION: 10-3-63. Default—destruction.

29080. Canned chicken breasts and canned turkey breasts. (F.D.C. No. 48671. S. Nos. 9-159/66, 10-841/2 T.)

QUANTITY: 2,597 1-lb. 8-oz. cans of chicken, and 2,636 1-lb. 8-oz. cans of turkey, at Murrysville, Pa.

SHIPPED: 9-4-62 and 9-17-62, from Chicago, Ill.

LIBELED: 1-14-63, W. Dist. Pa.

CHARGE: 402(a)(3)—contained decomposed chicken or turkey meat while held for sale.

DISPOSITION: 2-5-63. Default—destruction.

29081. Canned turkey breasts. (F.D.C. No. 48682. S. No. 30-947 V.)

QUANTITY: 459 cases, each containing 24 1-lb. 8-oz. cans, at Los Angeles, Calif.

SHIPPED: 11-1-62, from Chicago, Ill.

LIBELED: 1-18-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained decomposed turkey meat while held for sale.

DISPOSITION: On 3-4-63, Ralphs Grocery Co., Los Angeles, Calif., claimed the article. On 4-1-63, an order was filed pursuant to stipulation of the parties which order permitted the claimant and the Government to make a visual examination of the article. On 4-26-63, the Government filed a motion for summary judgment. On 5-6-63, the Government's motion for summary judgment came on for hearing and evidence was taken. The court found, among other things, that when the article was seized by the United States marshal, it was under refrigeration and it had been stored under refrigeration continuously subsequent to that time on the premises where it was seized; that there were cans of abnormal appearance in each of the 3 codes of the article; that because the percentage of abnormal cans increased from 16.6% on 1-3-63 to 44% on 4-8-63, there was strong evidence of progressive decomposition of the article; that the Government's examination of a sample consisting of 24 cans in their unopened state showed that 15 cans were abnormal in appearance; that those abnormalities were typically associated with internal gas formation and decomposition of the contents; and that 7 abnormal appearing cans and 5 normal appearing cans were opened and each can contained decomposed turkey meat. The court thereupon concluded that the article was adulterated and, on 5-20-63, ordered its destruction.

29082. Canned turkey breasts and canned chicken breasts. (F.D.C. No. 48674. S. Nos. 30-945/46 V.)

QUANTITY: 445 cases of turkey and 254 cases of chicken, each case containing 6 1-lb. 8-oz. cans, at Los Angeles, Calif.

SHIPPED: 9-10-62 and 11-1-62, from Chicago, Ill.

LIBELED: 1-15-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained decomposed turkey or chicken meat while held for sale.

DISPOSITION: On 7-1-63, a default decree was entered condemning the articles. The decree provided that Certified Grocers of California, Ltd., which had withdrawn its claim to the articles, be allowed to obtain 3 cans from each of 6 codes, for analyses, and that the claimant pay the court costs. The remainder of the articles were destroyed.

SPICES, FLAVORS, AND SEASONING MATERIALS

29083. Barbecue sauce. (F.D.C. No. 48654. S. No. 4-037 V.)

QUANTITY: 85 cases, each containing 12 1-lb. 4-oz. jars, at Richmond, Va.

SHIPPED: Prior to 7-6-62, from Baltimore, Md., by J. H. Filbert, Inc.

LABEL IN PART: (Jar) "Mrs. Filbert's Barbecue Sauce * * * Mfg. by J. H. Filbert, Inc., Baltimore, Maryland-Macon, Georgia."

RESULTS OF INVESTIGATION: The manufacturer's name and address, the quantity of contents statement, and the statement of ingredients were inconspicuous due to being printed in very small type on a mottled dark red and white background, the manufacturer's name and address and the statement of ingredients being in a vertical position on either side away from the main panel, and in a smaller type than the quantity of contents statement.

LIBELED: 3-1-63, E. Dist. Va.

CHARGE: 403(f)—when shipped, the information required to appear on the label under sections 403(e) (1) and (2) and 403(i)(2), namely, the name and place of business of the manufacturer, packer, or distributor, and an accurate statement of the quantity of contents, and the statement of ingredients, was not prominently placed on the label with such conspicuousness (as compared with other words, statements, designs, and devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 5-21-63. Consent—claimed by J. H. Filbert, Inc., and released under bond for relabeling.

29084. Caraway seed. (F.D.C. No. 49004. S. No. 80-301 V.)

QUANTITY: 25 110-lb. bags at Cleveland, Ohio.

SHIPPED: 2-21-63, from New York, N.Y., by Ideal Trading Co.

LABEL IN PART: (Bag) "GW Car 650 Philadelphia 110 Lbs. Gross 109 Lbs. Net Produce of the Netherlands Van Rooy Coffee Cleveland, Ohio."

RESULTS OF INVESTIGATION: Examination showed that the article contained aluminum metal fragments.

LIBELED: 6-11-63, N. Dist. Ohio.

CHARGE: 402(a)(2)(A)—when shipped, the article contained an added deleterious substance, namely, metal fragments, which was unsafe within the meaning of 406 since the substance was not required in the production of the food and could be avoided by good manufacturing practices.

DISPOSITION: 7-29-63. Default—destruction.

29085. Ginger root. (F.D.C. No. 48995. S. No. 66-304 V.)

QUANTITY: 141 50-lb. cases, at New York, N.Y.

SHIPPED: 8-20-62, from San Francisco, Calif.

LIBELED: On or about 6-19-63, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained moldy and decomposing ginger roots while held for sale.

DISPOSITION: 7-11-63. Default—destruction.

29086. Mustard seed. (F.D.C. No. 48442. S. No. 18-693 V.)

QUANTITY: 30 110-lb. bags at Amarillo, Tex., in possession of Golden Light Coffee & Equipment Co.

SHIPPED: Prior to 11-13-62, from Denmark.

LIBELED: 1-9-63, N. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-4-63. Consent—claimed by Golden Light Coffee & Equipment Co. Reconditioned: 1,030 lbs. destroyed.

29087. Prepared mustard. (F.D.C. No. 48715. S. No. 61-560 V.)

QUANTITY: 117 cases, each containing 4 1-gal. jars, at Denver, Colo.

SHIPPED: 2-20-63, from Amarillo, Tex., by Golden Light Coffee & Equipment Co.

LABEL IN PART: (Jar) "Golden Light Brand * * * Pure Mustard * * * Manufactured by Golden Light Coffee & Equipment Co. Amarillo-Lubbock."

LIBELED: 3-7-63, Dist. Colo.

CHARGE: 402(a) (3)—contained *Drosophila* flies and *Drosophila* fly parts; and 402(a) (4)—prepared and packed under insanitary conditions.

DISPOSITION: 4-25-63. Default—destruction.

29088. Prepared mustard. (F.D.C. No. 48759. S. No. 29-120 V.)

QUANTITY: 83 cases, 24 jars each, at Des Moines, Iowa.

SHIPPED: 2-27-63 and 3-18-63, from Rock Island, Ill., by Boetje Foods, Inc.

LABEL IN PART: (Jar) "Boetje's Dutch Mustard Contains—6 ounces avoirdupois Boetje Foods, Inc. Mfrs., Rock Island, Ill."

RESULTS OF INVESTIGATION: The article was found to be approximately 4.67 percent short weight.

LIBELED: 5-1-63, S. Dist. Iowa.

CHARGE: 403(e) (2)—when shipped, the article failed to bear a label containing an accurate statement of quantity of contents.

DISPOSITION: 6-18-63. Consent—ordered delivered to charitable institutions.

29089. Iodized salt and plain salt. (F.D.C. No. 48851. S. Nos. 53-001/2 V.)

QUANTITY: 64 cases, each containing 24 12-oz. pkgs. of iodized salt, and 45 cases, each containing 24 12-oz. pkgs. of plain salt, at Seattle, Wash.

SHIPPED: 11-20-62, from San Francisco, Calif., by Leslie Salt Co.

LABEL IN PART: (Pkg.) "Iodized Leslie Salt Leslie Salt Co. San Francisco Magnesium Carbonate added * * * Thiosulfate of Soda Added * * * Contains 0.01% Potassium Iodide"; and "Leslie Salt Leslie Salt Co. San Francisco Magnesium Carbonate Added."

RESULTS OF INVESTIGATION: Examination showed that each package was wrapped in a highly reflective foil wrapper, on which the name and address of the manufacturer, quantity of contents and ingredients statements on the gold-colored package were inconspicuous due to being printed in small type in silver-colored ink which did not afford sufficient color contrasts with the background color. Each case contained 8 gold-colored packages, and 8 green, 4 red, and 4 pink packages.

LIBELED: 4-16-63, W. Dist. Wash.

CHARGE: 403(f)—when shipped, the information required to appear in the labels under 403(e) (1) and (2), 403(i) (2), and (iodized salt only) 403(j), namely, the name and address of the manufacturer, packer, or distributor, an accurate statement of the quantity of contents, the statement of ingredients, and (iodized salt) the special dietary information with respect to iodine content, was not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling,

as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 5-7-63. Default—delivered to a Government institution.

29090. Lemon extract. (F.D.C. No. 48979. S. No. 3-371 V.)

QUANTITY: 11 ctns., each containing 12 32-oz. btls., at Franconia, Va.

SHIPPED: 3-22-63, from New York, N.Y., by Robbins Sales Co., Inc.

LABEL IN PART: (Btl.) "Derry's Lemon Extract Cont. 80% by Volume of Absolute Ethyl Alcohol 5% oil of Lemon * * * Derry Products, Inc. Brooklyn, N.Y."

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than the declared amount of lemon oil and alcohol.

LIBELED: 6-4-63, E. Dist. Va.

CHARGE: 402(b) (1)—when shipped, the valuable constituents, namely, lemon oil and ethyl alcohol had been in part omitted or abstracted from the article; and 403(a)—the label statements "80% by Volume of Absolute Ethyl Alcohol" and "5% oil of Lemon" were false and misleading.

DISPOSITION: 7-22-63. Default—delivered to a public institution for its use.

29091. Poppyseed. (F.D.C. No. 49267. S. No. 24-845 X.)

QUANTITY: 52 100-lb. bags, at Cleveland, Ohio, in possession of Crystal Sugar Co.

SHIPPED: 12-18-62, from New York, N.Y.

LIBELED: 8-14-63, N. Dist. Ohio.

CHARGE: 402(a) (3)—contained bird excreta; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 9-11-63. Default—destruction.

29092. Poppyseed. (F.D.C. No. 49000. S. No. 55-316 V.)

QUANTITY: 37 110-lb. bags, at Cedar Rapids, Iowa.

SHIPPED: 2-5-62, from North Bergen, N.J.

LIBELED: 6-8-63, N. Dist. Iowa; amended libel on or about 6-10-63.

CHARGE: 402(a) (3)—contained rodent urine while held for sale.

DISPOSITION: 6-26-63. Consent—claimed by Witwer Grocer Co., Cedar Rapids, Iowa. Thereafter, claimant advised that it did not intend to file a bond for the purpose of segregating the article and bringing it into compliance with the law. On 7-27-63, a supplemental decree of destruction was filed, and pursuant thereto the article was destroyed.

29093. Poppyseed. (F.D.C. No. 49049. S. No. 25-624 X.)

QUANTITY: 23 100-lb. bags, at Detroit, Mich., in possession of Detroit Sugar Milling Co.

SHIPPED: 5-18-61, from New York, N.Y.

LIBELED: 7-23-63, E. Dist. Mich.

CHARGE: 402(a) (3)—contained insects; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 9-4-63. Consent—destruction.

29094. Sage leaves. (F.D.C. No. 48797. S. No. 71-197 V.)

QUANTITY: 3 50-kg. bales, at Ecorse, Mich.

SHIPPED: 3-8-63 and 4-1-63, from Chicago, Ill., by Kearns & Smith, Spice Div. of Archibald & Kendall, Inc.

LABEL IN PART: (Bale) "Dalmation Sage Leaves Product of Yugoslavia"; (tag) "From Kearns & Smith Spice Div. Archibald & Kendall, Inc. * * * Chicago 24, Illinois * * * Black Diamond Brand Dalm. Leaf Sage."

LIBELED: 6-3-63, E. Dist. Mich.

CHARGE: 402(a) (3)—contained human, rodent, and cow hairs when shipped.

DISPOSITION: 7-5-63. Default—destruction.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE

29095. A-D-C water-soluble mix. (F.D.C. No. 48724. S. No. 45-456 V.)

QUANTITY: 7 drums, each containing 25 1-lb. bags, at Washburn, Mo.

SHIPPED: 5-25-62, from Indianapolis, Ind.

RESULTS OF INVESTIGATION: Examination showed that the article contained approximately 50 percent of the declared amount of vitamin A.

LIBELED: 3-18-63, W. Dist. Mo.

CHARGE: 402(b) (1)—while held for sale, the valuable constituent, vitamin A, had been in part omitted or abstracted from the article; and 403(a)—the label statement "Each Pound Contains: Vitamin A USP Units 8,000,000" was false and misleading.

DISPOSITION: 5-2-63. Default—destruction.

29096. La Lanne's instant breakfast food. (F.D.C. No. 48248. S. No. 30-181 V.)

QUANTITY: 1,937 boxes, each containing 4 7-oz. cans, at Los Angeles, Calif., in possession of Hollywood Premium Mailing Service.

SHIPPED: 2-28-62, from Cleveland, Ohio.

LABEL IN PART: (Can) "Jack La Lanne's Instant Breakfast The Delicious New Way To Enjoy a Nutritious Low Calorie Breakfast in just Seconds 7 Complete Breakfasts Formulated for La Lanne, Inc. Home Office, Hollywood 27, California."

ACCOMPANYING LABELING: Pamphlet entitled "Jack La Lanne's Plan For Weight Control," pamphlet entitled "New! * * * Jack La Lanne's Instant Breakfast," brochure entitled "Its Fun to Live and really enjoy life," order form, and return envelope.

RESULTS OF INVESTIGATION: The article had been shipped in bulk from Cleveland, Ohio, to Pasadena, Calif., where it was repacked into labeled cans supplied by La Lanne, Inc. The repacked article was then shipped to Hollywood Premium Mailing Service which packed the cans into boxes with the above accompanying labeling which had been received direct from the printer.

LIBELED: 10-25-62, S. Dist. Calif.

CHARGE: 403(a)—while held for sale, the name of the article, "Instant Breakfast" and statements in its labeling represented and suggested that the article contained an unusual quantity of protein for special dietary supplementation in an amount which was low in calories and was, therefore, of special value for weight reducing; that it satisfied the appetite and appeased hunger; and

that it furnished in one can, seven complete breakfasts, each significantly more nutritional than a breakfast consisting of 4 fluid ounces of fresh orange juice, 2 eggs, 2 slices of bacons, a cup of black coffee, one slice of whole wheat bread and one pat of butter, which name and statements were false and misleading since they were contrary to fact; 403(j)—the article was represented as a food for special dietary uses and its label failed to bear as required by regulations a statement of the percent by weight of the artificial sweetener contained in the article, namely, sodium cyclamate, and in juxtaposition therewith the word “nonnutritive.”

DISPOSITION: 1-29-63. Consent—claimed by La Lanne, Inc., and relabeled.

29097. Dietary food supplement. (F.D.C. No. 49302. S. No. 54-616 V.)

QUANTITY: 174 pkgs., at Lincoln, Nebr.

SHIPPED: Between 9-1-62 and 10-31-62, from Beverly Hills, Calif.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 75 percent of the declared amount of vitamin C.

LIBELED: 9-11-63, Dist. Nebr.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent, namely, vitamin C, had been in part omitted or abstracted from the article; and 403(a)—the label statement “Contents of 1 Baby-Pak Daily will supply * * * Vitamin C * * * 10 mg.” was false and misleading.

DISPOSITION: 10-14-63. Default—destruction.

29098. Nutri-Bio vitamins and minerals. (F.D.C. No. 48968. S. No. 24-851 V.)

QUANTITY: 262 ctns., each containing 2 pkgs. containing 13 dual compartment envelopes, at Sandusky, Ohio.

SHIPPED: Prior to 11-1-62, from Beverly Hills, Calif., by Nutri-Bio Corp.

LABEL IN PART: (Envelope) “Your Seven-Day Supply of Nutri-Bio Food supplement Vitamins & Minerals From Natural Or Organic Sources for the entire family * * * Nutri-Pak Better Nutri-tion Thru Bio-chemistry.”

RESULTS OF INVESTIGATION: Analysis showed that one lot of the article contained approximately 75 percent of the declared amount of vitamin C and that various lots of the article contained approximately 78 percent of the declared amount of vitamin B₁₂.

LIBELED: 5-17-63, N. Dist. Ohio.

CHARGE: 402(b)(1)—while held for sale, valuable constituents, namely, vitamin C and vitamin B₁₂, had been in part omitted or abstracted from the article; and 403(a)—the label statements “2 Vitamin Tablets and 4 Mineral Tablets Daily will supply * * * Vitamin C * * * 60 Mg. * * * Vitamin B₁₂ Activity (Cobalamin) [or “Cobalamin Concentrate (Vitamin B₁₂ Activity)”] 5 mcg.” were false and misleading as applied to a product containing less than the declared amount of those ingredients.

403(a)—when shipped, the name of the article “Nutrio-Bio * * * dietary food supplement” displayed upon the cartons was misleading as applied to an article whose composition (declared ingredients) varied from carton to carton; and 403(a)—the label of the article bore the false and misleading representation that the article was of significant value for special dietary supplementation because of the presence therein of unsaturated fatty acids, linoleic acid, linolenic acids, inositol, para-aminobenzoic acid, rutin, biotin, methionine, bioflavonoid complex, hesperiden complex, choline, alfalfa juice and powder

concentrate, copper, manganese, magnesium, potassium, sulfur, chlorine, sodium, montmorillonite (wonder clay); and because the ingredients of the article were of natural or organic origin.

DISPOSITION: 6-26-63. Default—destruction.

29099. Vitamin-mineral capsules. (F.D.C. No. 48962. S. Nos. 8-669/70 V.)

QUANTITY: 58 100-capsule btls. and 20 50-capsule btls., at New Britain, Conn.

SHIPPED: In 1958, from New York, N.Y.

RESULTS OF INVESTIGATION: Analysis showed that the articles contained approximately (100-capsule size) 76 percent of the declared amount of vitamin C and 78 percent of the declared amount of vitamin B₁ and (50-capsule size) 78 percent of the declared amount of vitamin B₁.

LIBELED: 5-22-63, Dist. Conn.

CHARGE: 402(b) (1)—while held for sale, valuable constituents, vitamin C (100-capsule size) and (both lots) vitamin B₁, had been in part omitted or abstracted from the article; and 403(a)—the label statements (both lots) "Each capsule contains * * * Vitamin B₁ 2.50 mg." and (100-capsule size) "Each capsule contains * * * Vitamin C 37.50 mg." were false and misleading.

DISPOSITION: 7-10-63. Default—destruction.

29100. Vigorped tablets. (F.D.C. No. 48645. S. No. 7-421 V.)

QUANTITY: 2 drums containing approximately 40,500 and 10,000 tablets respectively, 19 1,000-tablet btls., 22 500-tablet btls., and 9 100-tablet btls., at Lawrence, Mass., in possession of Pediatric Drug Co., Inc.

SHIPPED: 5-1-59, from St. Louis, Mo.

LABEL IN PART: (Btl.) "C. T. Brown Vigorped T-29 Each tablet contains: * * * Folic Acid 0.1 mg. * * * Dosage: 2 tablets 3 times a day * * * Manufactured for J. P. Drug Co., Lawrence, Mass."

ACCOMPANYING LABELING: Additional bottle labels reading as above.

RESULTS OF INVESTIGATION: The tablets were shipped in bulk drums and some tablets had been repacked and labeled as above by the dealer.

LIBELED: 2-20-63, Dist. Mass.

CHARGE: 402(a) (2) (C)—while held for sale, the article contained a food additive, namely, folic acid, which was unsafe within the meaning of 409, since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409; 403(a)—the name of the repacked article "Vigorped" and statements in its labeling, were false and misleading in that they represented and suggested that the article was adequate and effective to promote vigor, growth, and health; and that the article was balanced and supplied 18 times the minimum daily requirement for vitamin B; 403(j)—the article was represented for special dietary use and its label failed to bear such information concerning its vitamin and mineral properties as the Secretary had determined to be, and by regulations prescribed as, necessary in order fully to inform purchasers as to its value for such use, since its label failed to bear, as required by regulations, a statement of the proportion of the minimum daily requirement for vitamin B₁, vitamin C, calcium, phosphorus and iron supplied by such food when consumed in a specified quantity during a period of one day.

DISPOSITION: 4-10-63. Default—destruction.

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Fish and shellfish-----	29047-29054		29046
Flavors. <i>See</i> Spices, flavors, and		Pinto beans, canned-----	29069
seasoning materials.		Poppyseed-----	29068, 29091-29093
Flour-----	29014-29024, 29043	Poultry ----- ¹	29076-29082
self-rising-----	29023, 29024	Rice -----	29020, 29025-29031
Food additive violation-----	29100	Rolls. <i>See</i> Bread and rolls.	
French bread-----	29011	Royal Crown Cola-----	29006
		Orange Cola-----	29006
		Safflower shortening-----	29075

¹(29007, 29061, 29076) Injunction issued.²(29012) Prosecution contested.

	N.J. No.		N.J. No.
Sage leaves.....	29094	Sweet Doh Base.....	29043
Salt.....	29089	Trout fillets.....	29050
iodized	29089	Turkeys. <i>See</i> Poultry.	
Self-rising flour.....	29023, 29024	Vegetables. <i>See</i> Fruits and vege-	
Seven-Up.....	29006	tables.	
Shellfish. <i>See</i> Fish and shellfish.		Vigroped tablets.....	29100
Shrimp, breaded, frozen....	29051, 29052	Vitamin, mineral, and other prod-	
frozen.....	29053, 29054	ucts of special dietary signifi-	
Soybeans	29031, 29066	cance	29095-29100
Spices, flavors, and seasoning		Wafers, chocolate-flavored.....	29009
materials	29083-29094	Wheat.....	29032-29040
Split peas, green, dried.....	29065	Whitefish fillets.....	29050
yellow, dried.....	29065		

SHIPPERS, MANUFACTURERS, AND DISTRIBUTORS

	N.J. No.		N.J. No.
Affiliated Bakers Corp. :		Brighton (boat) :	
fruitcake	29008	frozen perch fillets.....	29048
Archibald & Kendall, Inc. <i>See</i>		Caracara (boat) :	
Kearns & Smith.		frozen haddock fillets.....	29049
Armory Wholesale Grocery Co.,		Cohn, Sol :	
Inc. :		flour, rice, macaroni, baby	
rice	29029	cereal, and candy.....	29020
Arnold Grain Co. :		Cohn, Wm. :	
wheat	29034	flour, rice, macaroni, baby	
Ashcraft, L. K., Co. :		cereal, and candy.....	29020
flour and self-rising flour.....	29023	Collins-Dietz-Morris Co. :	
Baby Rose (boat) :		rice, dried Great Northern	
frozen haddock fillets.....	29049	beans, and cornmeal.....	29030
Banner Roller Mills, Inc. :		Crest Importing Co., Inc. :	
self-rising flour.....	29024	frozen shrimp.....	29053, 29054
Barth, C. H. :		Crystal Sugar Co. :	
dried beans and dried peas... ¹	29061	poppyseed	29091
Barth, C. H., Co. <i>See</i> Barth,		Dall Vechia, Jos., Jr. :	
C. H.		apple juice.....	29060
Berger, D. L. :		Dall Vechia, Jos., Sr. :	
dried beans and dried peas... ¹	29061	apple juice.....	29060
Binnings, E. S., Inc. :		Dall Vechia & Son Cider Mill :	
green coffee beans.....	29001	apple juice.....	29060
Blaufuss, Geo., Jr. :		Damsky, H. L. :	
apple cider.....	29059	dried beans, poppyseed, and	
Blaufuss, Geo., & Son :		caraway seed.....	29068
apple cider.....	29059	Damsky, Jos. :	
Blue Goose Growers, Inc. :		dried beans, poppyseed, and	
oranges	29058	caraway seed.....	29068
Boats. <i>See</i> Baby Rose, Brighton,		Damsky, E. Simon, Sons, Inc. :	
Caracara, and Dorothy M.		dried beans, poppyseed, and	
O'Hara.		caraway seed.....	29068
Boetje Foods, Inc. :		Derry Products, Inc. :	
prepared mustard.....	29088	lemon extract.....	29090

¹(29007, 29061, 29076) Injunction issued.

	N.J. No		N.J. No.
Detroit Sugar Milling Co. :		Funk Bros. Seed Co. :	
poppyseed -----	29093	shelled feed corn -----	29046
Dial, L.C. :		General Feed & Grain Co. :	
flour and cornmeal -----	29018	wheat -----	29035
Dial Wholesale Grocer Co. :		General Mills, Inc. :	
flour and cornmeal -----	29018	flour -----	29022
Diamond Baking Co., Inc. :		Golden Light Coffee & Equipment	
bread and rolls ----- ²	29012	Co. :	
Diamond Club Beverages Corp. :		mustard seed -----	29086
chocolate-flavored beverages ---	29005	prepared mustard -----	29087
Dorothy M. O'Hara (boat) :		Grisez, J. F. :	
frozen perch fillets -----	29048	dried beans and dried peas --- ¹	29061
Eagle Poultry Co., Inc. :		Guilfuss, O. A. :	
poultry ----- ¹	29076	frozen cakes ----- ¹	29007
Eagle Poultry Packers, Inc. :		HLH Products Co. :	
poultry -----	29076	frozen chicken -----	29079
East Texas Associated Grocers,		Helena Wholesale, Inc. :	
Inc. :		flour, cornmeal mix, and egg	
flour -----	29014	noodles -----	29019
El Molino Mills :		Hendrick, T. B. :	
rice and soybeans -----	29031	rice, dried Great Northern	
Elmore Milling Co., Inc. :		beans, and cornmeal -----	29030
animal feed -----	29045	Holland-American Wafer Co. :	
Elsa Canning Co. :		creme wafer sticks -----	29010
green lima beans -----	29067	Hollywood Premium Mailing	
Esposito Bros. :		Service :	
table and cooking oil -----	29072	La Lanne's instant breakfast	
Farmers Cooperative Associa-		food -----	29096
tion :		Ideal Trading Co. :	
wheat -----	29040	caraway seed -----	29084
Farmers Granary, Inc. :		Imperial Rice Mill, Inc. :	
soybeans -----	29066	rice -----	29027
Fernberg, Merle :		J. P. Drug Co. :	
rice, dried Great Northern		Vigorped tablets -----	29100
beans, and cornmeal -----	29030	Jackson, S., & Son, Inc. :	
Ferry-Morse Seed Co. :		green coffee beans -----	29003
dried corn -----	29071	Johnson, N. L., Grain Co. :	
Filbert, J. H., Inc. :		wheat -----	29032
barbecue sauce -----	29083	Karnak Grain Co. :	
Flavor Fresh Brand Packaged		wheat -----	29033
Vegetables :		Kay-Gee Sales Corp. :	
fresh blueberries -----	29057	canned green beans -----	29070
Food Fair Stores, Inc. <i>See</i>		Kearns & Smith, Spice Div. of	
Setzer's Bakery, Inc.		Archibald & Kendall, Inc. :	
Forrest City Grocery Co. :		sage leaves -----	29094
flour, rice, macaroni, baby		Kozloff, J., Fish Distributors,	
cereal, and candy -----	29020	Inc. :	
Franco American Baking Co.		whitefish fillets and trout	
<i>See</i> Toscani, F. A.		fillets -----	29050

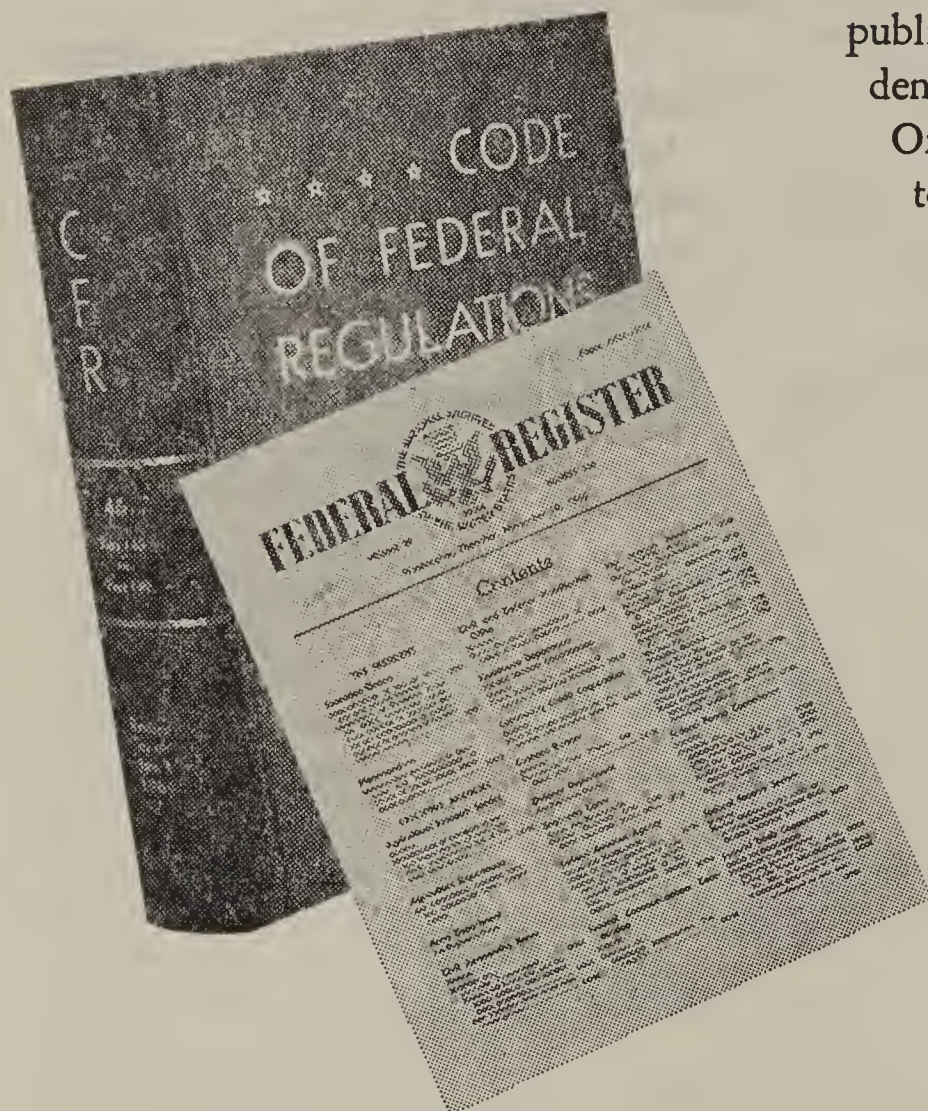
¹(29007, 29061, 29076) Injunction issued.²(29012) Prosecution contested.

	N.J. No.		N.J. No.
K-Sall Termite & Pest Control Co.:		Peltz Bros., Inc.:	
alfalfa meal-----	29044	dried yellow split peas, green split peas, green peas, and navy beans-----	29065
La Lanne, Jack:		Perkins, S. J.:	
La Lanne's instant breakfast food-----	29096	dried beans and dried peas--- ¹	29061
La Lanne, Inc.:		Pretzel Bitz Corp.:	
La Lanne's instant breakfast food-----	29096	dried corn-----	29071
Landa Cooperative Elevator Co.:		R & B Warehouse:	
wheat-----	29037	Donut mixes-----	29041
Landes, Harry:		Randall, C. C.	
poultry----- ¹	29076	various bottled beverages-----	29006
Leslie Salt Co.:		Randall, H. W.:	
iodized salt and plain salt-----	29089	various bottled beverages-----	29006
Lewis, F. J.:		Rawson Cooperative:	
dried beans and dried peas--- ¹	29061	wheat-----	29038
Limco Importers, Inc.:		Robbins Sales Co., Inc.:	
table and cooking oil-----	29073	lemon extract-----	29090
Linda Food Products:		Rosa Food Product Co.:	
table and cooking oil-----	29073	olive oil-----	29074
Loyd, C. R.:		Rothermel Bros. Flour & Feed Co.:	
frozen cakes----- ¹	29007	flour-----	29021
Mackey, C. A., & Co., Inc.:		Royal Crown Bottling Co.:	
green coffee beans-----	29002	various bottled beverages-----	29006
Magic Valley Bean Co., Inc.:		Sabatier, E. P.:	
dried beans and dried peas--- ¹	29061	rice-----	29027
Morris Wholesale Co.:		Salvo, Pietro:	
Donut mix, Sweet Doh Base, and flour-----	29043	olive oil-----	29074
Nectar Foods, Inc.:		San-Val Distributing Co.:	
fruitcake-----	29008	safflower shortening-----	29075
New York, New Haven & Hartford Railroad:		Setzer's Bakery, Inc., Div. of Food Fair Stores, Inc.:	
flour-----	29016	bread and rolls-----	29013
Nutri-Bio Corp.:		Seven-Up Bottling Co.:	
Nutri-Bio vitamins and minerals-----	29098	various bottled beverages-----	29006
Ohio Fruit Products Co., Inc.:		Sexton, J. F., & Sons Fish Co.:	
glaced fruit-----	29056	frozen catfish-----	29047
Palmer, Louis:		Singleton Packing Corp.:	
bread and rolls----- ²	29012	frozen breaded shrimp--	29051, 29052
Paramount Citrus Association, Inc.:		Slott, L. S.:	
cherry-apple-flavored drink-----	29004	bread and rolls-----	29013
Pediatric Drug Co., Inc.:		Southern Bakeries Co.:	
Vigorped tablets-----	29100	frozen cakes----- ¹	29007
		Southern Grain & Provision Co.:	
		rice-----	29026
		Spicer, P. E.:	
		alfalfa meal-----	29044

¹(29007, 29061, 29076) Injunction issued.²(29012) Prosecution contested.

	N.J. No.		N.J. No.
Stephens Grain Co.:		Valley Bean & Grain Co. <i>See</i>	
wheat -----	29039	Grisez, J. F.	
Taylor Baking Co., Inc.:		Van Rooy Coffee:	
flour -----	29017	caraway seed-----	29084
Temple-Stephens Co., Inc.:		Vegetable Oil Products Co., Inc.:	
navy beans-----	29064	safflower shortening-----	29075
Thomas & Howard Co.:		Werling, J. M., & Son:	
rice -----	29025	canned green beans-----	29070
Thoreson, C. J., Elevator:		West Coast Grocery Co.:	
wheat -----	29036	rice -----	29028
Threemor Sales Co. <i>See</i> Dia-		Western Fruit Growers Packing	
mond Club Beverages Corp.		Co.:	
Toscani, F. A.:		oranges -----	29058
french bread-----	29011	Whitson Food Products Co.:	
United States Products Corp.,		canned pinto beans-----	29069
Ltd.:		Zivin, Louis:	
canned apricots and canned		chocolate-flavored beverages---	29005
fruit cocktail-----	29055		

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U.S. Department of Health, Education, and Welfare
FOOD AND DRUG ADMINISTRATION

**NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD,
 DRUG, AND COSMETIC ACT**

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

29101-29200

FOODS

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were alleged to be adulterated or misbranded within the meaning of the Act, when introduced into and while in interstate commerce, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default, consent, or, in one case, trial by the court, and in which, in two related cases, the libels were dismissed following the second appeal of trial court's order; (2) criminal proceedings which were terminated upon pleas of guilty and nolo contendere; and (3) an injunction proceeding terminated upon the entry of a permanent injunction by consent. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal and injunction proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., April 22, 1964.

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MAY 8 - 1964

SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN ALLEGED VIOLATIONS REPORTED IN F.N.J. NOS. 29101-29200

Adulteration, Section 402(a) (1), the article contained a poisonous or deleterious substance which might render it injurious to health; Section 402(a) (2) (A), the article contained an added deleterious substance, which was unsafe within the meaning of Section 406; Section 402(a) (2) (B), the article was a raw agricultural commodity and contained a pesticide chemical which was unsafe within the meaning of Section 408(a); Section 402(a) (2) (C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a) (4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b) (1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b) (2), a substance had been substituted in whole or in part for the article; Section 402(b) (3), inferiority had been concealed in some manner; Section 402(b) (4), a substance had been added to the article or mixed or packed therewith so as to increase its bulk or weight, or make it appear better or of greater value than it was; Section 402(c), the article was a color additive which was unsafe within the meaning of Section 706(a); Section 406, a deleterious substance was unsafe since such substance was not required in the production of food and could have been avoided by good manufacturing practice; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because the quantity of the pesticide chemical in or on the raw agricultural commodity was not within the limits of a tolerance prescribed by the Secretary of Health, Education, and Welfare; Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use; and Section 706(a), a color additive was deemed to be unsafe because (1) there was not in effect, or such additive and its use were not in conformity with, a regulation listing such additive for a particular use, and such additive was neither from a batch certified for such use, nor had, with respect to such use, been exempted from certification; or (2) such additive and its use failed to conform to the terms of an exemption.

Misbranding, Section 403(a), the labeling of the article was false and misleading; Section 403(b), the article was offered for sale under the name of another food; Section 403(d), the container of the article was so made, formed, or filled as to be misleading; Section 403(e), the article was in package form, and it failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g) (1), the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed

by regulations and it failed to conform to such definition and standard; Section 403(i), the article was not subject to the provisions of Section 403(g) and (1) its label failed to bear the common or usual name of the article; and (2) the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; and Section 403(k), the article contained artificial coloring, and failed to bear labeling stating that fact.

CEREALS AND CEREAL PRODUCTS

BAKERY PRODUCTS*

29101. Apple turnovers and fried apple pies. (F.D.C. No. 48879. S. Nos. 2-384 V, 17-132 V, 36-414 V.)

INFORMATION FILED: 11-21-63, E. Dist. Tenn., against Mercer Baking Co., Inc., Chattanooga, Tenn.

SHIPPED: Between 10-30-62 and 11-6-62, from Tennessee to Georgia and Mississippi.

LABEL IN PART: "Mercer's Apple turnover 10¢ Serve Hot or Cold Net Weight 3 OZ. MERCER'S INC CHATTANOOGA, TENN.," and "APPLE HARDIN'S FRIED PIE 10¢ DISTRIBUTED BY HARDIN'S BAKERIES Jackson·Meridian·Tupelo·Columbus, Miss. Net Wt. 3 Oz."

CHARGE: 402(a)(3)—one lot of apple turnovers contained insects and insect parts, one lot of apple turnovers and the fried pies contained insect parts; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 11-21-63. \$200 fine.

29102. Cheese corn. (F.D.C. No. 48108. S. No. 62-558 T.)

QUANTITY: 102 cases, each containing 12 bags, at Haverhill, Mass.

SHIPPED: 8-9-62 and 8-16-62, from Lincoln, R.I., by New England Popcorn Co.

LABEL IN PART: (Bag) "Rex * * * Cheese Corn * * * Ingredients * * * Net Wt. 3¾ Oz. * * * Rex Potato Chip Co. Haverhill, Massachusetts."

RESULTS OF INVESTIGATION: Examination showed that the article was short weight. The average net weight found was 3.61 oz. The average short weight was found to be 0.14 oz., or 3.7 percent.

LIBELED: 9-17-62, Dist. Mass.

CHARGE: 403(e)(2)—when shipped, the label of the article failed to bear an accurate statement of the quantity of contents.

DISPOSITION: 10-23-62. Default—delivered to a public institution for its use.

CORNMEAL**

29103. Cornmeal. (F.D.C. No. 47368. S. Nos. 880/81 T, 884/86 T.)

INFORMATION FILED: 8-7-62, M. Dist. Ga., against Eelbeck Milling Co., Inc., Columbus, Ga., and Harold D. Buck, president.

SHIPPED: 12-18-61, from Columbus, Ga., to Phenix City, Ala.

*See also No. 29109.

**See also Nos. 29110, 29135.

LABEL IN PART: "EELBECK Superior White-Sifted CORN MEAL Manufactured by EELBECK MILLING CO., (OF GEORGIA) Columbus, Georgia 2 LBS. NET WEIGHT."

CHARGE: 402(a)(4)—prepared under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 6-24-63. Corporation and individual—\$250 fine each.

29104. Cornmeal, dried Great Northern beans, and flour. (F.D.C. No. 47363. S. Nos. 45-460/1 T, 46-753/5 T.)

INFORMATION FILED: 12-14-62, amended information in March 1963, E. Dist. Mo., against Wetterau Grocer Co., a corporation, at Desloge, Mo., and Ferlyn H. Prather, vice president.

ALLEGED VIOLATIONS: Between 6-14-61 and 1-23-62, the defendants placed quantities of cornmeal, beans, and flour in a building which was accessible to rodents and held the food under insanitary conditions and did expose food to contamination by rodents which acts resulted in the food being adulterated.

CHARGE: 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 7-12-63. Corporation—\$500 fine; Prather—\$5 fine. The defendants were also assessed court costs.

FLOUR*

29105. Flour. (F.D.C. No. 49222. S. Nos. 385/86 X.)

QUANTITY: 163 100-lb. bags, at Atlanta, Ga., in possession of Mixies, Inc.

SHIPPED: 2-1-63, from Chester, Ill.

LIBELED: 8-8-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained insects, insect larvae, rodent excreta and rodent hairs; and 402(a)(4)—stored under insanitary conditions.

DISPOSITION: 9-23-63. Consent—claimed by Mixies, Inc. Segregated; 42 bags destroyed, remainder denatured.

29106. Flour. (F.D.C. No. 49396. S. No. 37-749 X.)

QUANTITY: 350 100-lb. bags at New Orleans, La., in possession of Biehl & Co.

SHIPPED: 5-24-63, from Atchison, Kans.

LIBELED: 9-27-63, E. Dist. La.

CHARGE: 402(a)(3)—contained insects and rodent urine; 402(a)(4)—held under insanitary conditions.

DISPOSITION: 11-4-63. Default—destruction.

29107. Flour. (F.D.C. No. 49086. S. No. 2-502 X.)

QUANTITY: 329 25-lb. bags, at Jacksonville, Fla., in possession of Winn-Dixie Stores, Inc.

SHIPPED: 4-5-63 and 4-18-63, from Chattanooga, Tenn.

LIBELED: 6-21-63, M. Dist. Fla.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-28-63. Default—destruction.

*See also Nos. 29104, 29135.

29108. Self-rising flour. (F.D.C. No. 49371. S. Nos. 1-726/27 X.)

QUANTITY: 79 10-lb. bags and 67 25-lb. bags, at Duluth, Ga., in possession of Parsons, Inc.

SHIPPED: 8-2-63, from Cleveland, Tenn.

LIBELED: 10-2-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 11-15-63. Default—denatured and delivered to a public institution for use as animal feed.

29109. Flour, dried Great Northern beans, and cookies. (F.D.C. No. 48888. S. Nos. 45-286/88 V, 45-295/96 V.)

INFORMATION FILED: 7-10-63, E. Dist. Ark., against Grand Prairie Wholesale Grocery Co., Inc., Stuttgart, Ark., and Lee Berry, president.

ALLEGED VIOLATIONS: Between 8-18-62 and 10-31-62, while quantities of flour, beans, and cookies were being held for sale after shipment in interstate commerce, the defendants caused the articles to be held in a building accessible to insects and rodents and to be exposed to contamination by insects and rodents, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained insects, insect larvae, excreta, and webbing, and rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 8-13-63. Both defendants—probation for 1 year.

29110. Flour, unpopped popcorn, cornmeal, and cornmeal mix. (F.D.C. No. 49103. S. Nos. 15-009 X, 15-011/12 X, 15-016/18 X.)

QUANTITY: 70 bales, each containing 2 25-lb. bags, and 26 bales, each containing 10 2-lb. bags of flour; 23 cases, each containing 24 1-lb. bags of popcorn; 4 bales, each containing 10 5-lb. bags of cornmeal mix; and 9 bales, each containing 10 5-lb. bags of cornmeal, at Hamilton, Ohio, in possession of Wilson Chaney Wholesale Grocery Co.

SHIPPED: Between 11-12-62 and 5-3-63, from Minneapolis, Minn., South Bend, Ind., and Erlanger, Ky.

LIBELED: 7-15-63, S. Dist. Ohio.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-19-63. Default—ordered delivered to a Government institution for use as animal feed.

MACARONI AND NOODLE PRODUCTS**29111. Macaroni and noodle products. (F.D.C. Nos. 49039, 49125. S. Nos. 30-562/64 X, 30-566/70 X.)**

QUANTITY: 94 cases, each containing 12 1-lb. pkgs. of noodles, and 37 cases, each containing 24 8-oz. boxes, and 54 cases, each containing 12 1-lb. boxes of macaroni products at Los Angeles, Calif., in possession of I. Rudin & Co.

SHIPPED: Between 11-23-62 and 3-4-63, from New York, N.Y.

LIBELED: 7-22-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects, insect larvae, and pupae; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-26-63. Default—destruction.

29112. Egg noodles. (F.D.C. No. 48741. S. Nos. 15-289/90 V.)

QUANTITY: 49 10-lb. cases, at Indianapolis, Ind.

SHIPPED: 3-8-63, from Chicago, Ill., by Schoneberger & Sons.

LABEL IN PART: (Case) "Perry's Brand Kluski Egg Noodles * * * J. C. Perry Co. Indianapolis, Ind. Medium [or "Broad"] Enriched."

LIBELED: 4-15-63, S. Dist. Ind.

CHARGE: 402(b)(1)—when shipped, the valuable constituent, egg or egg yolk solids, had been in part omitted or abstracted from the article; and 403(g)(1)—the article failed to conform to the definition and standard of identity for egg noodles since the total solids of the article contained less than 5.5 percent by weight of solids of egg or egg yolk.

DISPOSITION: 6-25-63. Default—ordered released to charitable institutions.

29113. Spaghetтини. (F.D.C. No. 49318. S. No. 23-130 X.)

QUANTITY: 54 20-lb. ctus. at Denver, Colo.

SHIPPED: 8-22-63, from St. Louis, Mo., by Ravarino & Freschi, Inc.

LABEL IN PART: (Ctn.) "Egg Product R-F La Terminese Enriched Spaghet-
tini * * * Ravarino and Freschi, Inc., St. Louis, Mo."

LIBELED: 9-17-63, Dist. Colo.

CHARGE: 402(a)(3)—contained insects, insect fragments, and insect larvae when shipped.

DISPOSITION: 11-1-63. Default—delivered to a public institution for use as animal feed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

29114. Rice. (F.D.C. No. 48317. S. No. 36-804 V.)

QUANTITY: 663 10-lb. bags, at Beaumont, Tex.

SHIPPED: 9-5-62, from Lake Arthur, La., by Lake Rice Mill, Inc.

LABEL IN PART: (Bag) "Rice Bob-White Brand * * * Packed for the Stedman Co., Beaumont, Texas."

LIBELED: 10-18-62, E. Dist. Tex.

CHARGE: 402(a)(3)—contained insects and insect parts; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 3-8-63. Consent—claimed by Stedman Co., of Beaumont, Tex., and converted to animal feed.

29115. Rice. (F.D.C. No. 49003. S. No. 63-634 V.)

QUANTITY: 46 100-lb. bags of rice, at Los Angeles, Calif.

SHIPPED: On or about 12-4-62 and 12-19-62, from Houston, Tex.

LIBELED: 6-11-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects and insect larvae while held for sale.

DISPOSITION: 7-2-63. Consent—claimed by International Grocery Co., of Los Angeles, Calif. Reconditioned; 352 lbs. destroyed.

*See also No. 29110.

29116. **Rice.** (F.D.C. No. 48578. S. Nos. 45-396/8 R, 1-759/60 T, 200 V, 60-001 V.)

INFORMATION FILED: 6-7-63, E. Dist. S.C., against Heins & Lesemann, Inc., Charleston, S.C.

ALLEGED VIOLATIONS: Between 3-14-61 and 12-6-62, while quantities of rice were being held for sale after shipment in interstate commerce, the defendant caused such rice to be held in a building accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the rice being adulterated.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 10-7-63. \$900 fine.

29117. **Rice.** (F.D.C. No. 49349. S. No. 2-209 X.)

QUANTITY: 75 25-lb. bags, at Charleston, S.C., in possession of Pearce-Young-Angel, Inc.

SHIPPED: 7-25-63, from Mobile, Ala.

LIBELED: 9-24-63, E. Dist. S.C.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 11-8-63. Default—destruction.

29118. **Rice mixes.** (F.D.C. No. 48722. S. Nos. 10-881/3 V.)

QUANTITY: 1,796 ctns., each containing 12 6-oz. pkgs. of rice mixes, at Tonawanda, N.Y., in possession of Roadway Express, Inc.

SHIPPED: 2-22-63, from Dallas, Tex.

RESULTS OF INVESTIGATION: Examination showed that 898 cartons contained a poisonous or deleterious substance, namely, formaldehyde; and that all cartons had been held under insanitary conditions in a truck trailer in which a number of barrels containing formaldehyde leaked their entire contents into the truck trailer transporting the articles.

LIBELED: 3-19-63, W. Dist. N.Y.

CHARGE: 402(a)(1)—a portion of the article contained an added poisonous or deleterious substance, namely, formaldehyde, which may have rendered it injurious to health; and 402(a)(4)—all lots held under insanitary conditions whereby they may have been rendered injurious to health, while in interstate commerce.

DISPOSITION: 3-22-63. Consent—destruction.

29119. **Wheat.** (F.D.C. No. 49021. S. No. 34-941 X.)

QUANTITY: 92,640 lbs. at Duluth, Minn.

SHIPPED: 6-5-63, from Baker, N. Dak., by Farmers Union Cooperative Elevator Co.

LIBELED: 6-27-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-17-63. Consent—claimed by Farmers Union Cooperative Elevator Co. of Baker, and converted into animal feed.

29120. Wheat. (F.D.C. No. 49036. S. No. 33-909 X.)

QUANTITY: 60,500 lbs., at St. Paul, Minn.

SHIPPED: 6-20-63, from Underwood, N. Dak., by Farmers Elevator & Mercantile Co.

RESULTS OF INVESTIGATION: Examination showed that the wheat contained excessive foreign material (dockage) which was concealed beneath the surface of the wheat in various sections of the railroad car in which shipped.

LIBELED: 7-11-63, Dist. Minn.

CHARGE: 402(b) (3)—inferiority had been concealed; and 402(b) (4)—foreign material (dockage) had been added or mixed or packed with the article so as to increase its bulk or weight when shipped.

DISPOSITION: 7-17-63. Consent—claimed by Farmers Elevator & Mercantile Co., and denatured.

29121. Wheat. (F.D.C. No. 49052. S. Nos. 34-516 X, 34-337 X.)

QUANTITY: 46,800 lbs., at Minneapolis, Minn.

SHIPPED: 7-13-63, from Baker, Mont., by Equity Cooperative Association.

LIBELED: 7-24-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-12-63. Consent—claimed by Equity Cooperative Association and denatured.

29122. Wheat. (F.D.C. No. 49287. S. No. 35-608 X.)

QUANTITY: 90,000 lbs. at New Prague, Minn.

SHIPPED: 7-31-63, from Strasburg, N. Dak., by Farmers Elevator Co.

LIBELED: 8-27-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 9-3-63. Consent—claimed by Farmers Elevator Co. Reconditioned; 9,600 lbs. destroyed.

29123. Wheat. (F.D.C. No. 49044. S. No. 34-315 X.)

QUANTITY: 110,000 lbs., at Minneapolis, Minn.

SHIPPED: 6-19-63, from McVille, N. Dak., by Farmers Cooperative Elevator Co.

LIBELED: 7-16-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-19-63. Consent—claimed by Farmers Cooperative Elevator Co., and denatured.

29124. Wheat. (F.D.C. No. 49005. S. No. 33-862 X.)

QUANTITY: 72,120 lbs., at Minneapolis, Minn.

SHIPPED: 5-16-63, from Kelso, N. Dak., by Farmers Union Grain Terminal Association.

LIBELED: 6-12-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-29-63. Consent—claimed by Farmers Union Grain Terminal Association and denatured.

- 29125. Confectionery maize flakes and shelled Spanish peanuts.** (F.D.C. No. 48501. S. Nos. 36-838/9 V.)
- QUANTITY: 42 50-lb. bags of flakes, and 9 115-lb. bags of peanuts, at Shreveport, La., in possession of Julius Gamm Co., Inc.
- SHIPPED: 8-17-62 and 9-26-62, from Kankakee, Ill., and Comanche, Tex.
- LIBELED: 12-28-62, W. Dist. La.
- CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.
- DISPOSITION: 1-21-63. Consent—claimed by Julius Gamm Co., Inc. Reconditioned; 40 lbs. of flakes and 5 lbs. of peanuts destroyed.
- 29126. Breeding.** (F.D.C. No. 49367. S. Nos. 59-922/24 X.)
- QUANTITY: 16 200-lb. drums of special breadier, 6 200-lb. drums of batter mix, and 22 50-lb. drums of cracker meal at Kansas City, Mo.
- SHIPPED: Between 5-6-63 and 8-30-63, from Millstadt, Ill.
- LIBELED: 9-30-63, W. Dist. Mo.
- CHARGE: 402(a)(3)—contained insects while held for sale.
- DISPOSITION: 10-15-63. Default—delivered to a charitable institution for use as animal feed.
- 29127. Malt barley.** (F.D.C. No. 49266. S. No. 35-805 X.)
- QUANTITY: 35,000 lbs. at Bismarck, N. Dak.
- SHIPPED: 6-11-63, from Winona, Minn.
- LIBELED: 8-8-63, Dist. N. Dak.
- CHARGE: 402(a)(3)—contained live insects and insect larvae while held for sale.
- DISPOSITION: 9-11-63. Consent—claimed by Dakota Malting & Brewing Co., Bismarck, N. Dak., for denaturalization and use as cattle feed.
- 29128. Instant liquid malt.** (F.D.C. No. 48720. S. No. 55-099 V.)
- QUANTITY: 12 1-qt. btls., and 37 1-gal. btls., at Carroll, Iowa.
- SHIPPED: 2-8-63, from McCook, Nebr., by Grain Products Corp.
- LABEL IN PART: (Btl.) "Harmon's Instant Liquid Malt * * * Mfg. by Grain Prod. Corp. McCook, Nebr. * * * Ingredients: Water, Corn Syrup, Malt 0.1% Potassium Sorbate As A Chemical Preservative."
- RESULTS OF INVESTIGATION: Examination showed article to be a tan-colored liquid with a sweet taste and malt-like odor. Statement of ingredients was printed in type so small as to be blurred and illegible in part.
- LIBELED: 3-12-63, N. Dist. Iowa.
- CHARGE: 403(f)—when shipped, the information required under 403(i)(2), namely, the ingredients statement, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.
- DISPOSITION: 5-27-63. Default—delivered to a charitable institution.
- 29129. Unpopped popcorn.** (F.D.C. No. 49213. S. No. 1-972 X.)
- QUANTITY: 77 50-lb. bags, at Atlanta, Ga.

SHIPPED: 7-11-63, from Tampa, Fla., by Star Terminal & Warehouse.

LABEL IN PART: (Bag) "Topeka, Indiana * * * Kind of Popcorn: Yellow."

LIBELED: 8-5-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained insects and insect parts when shipped and while held for sale.

DISPOSITION: 9-11-63. Default—ordered destroyed or delivered to a Government institution for use as animal feed.

CONFECTIONERY

29130. Delson thin mints. (F.D.C. No. 42799. S. No. 32-538 P.)

QUANTITY: 174 cases, each containing 24 10-oz. pkgs., at Carlstadt, N.J.

SHIPPED: Between 5-9-58 and 6-13-58, from New York, N.Y., by Delson Candy Co.

LABEL IN PART: (Pkg.) "Delson Thin Mints Chocolate Covered * * * Delson Candy Co. * * * New York, N.Y."

RESULTS OF INVESTIGATION: Examination showed that the article was disc-shaped chocolate-covered mints packed in a single-layer, long, narrow, rectangular box, divided into 3 parts by means of built-in, hollow, cardboard dividers, with a similar hollow construction at each end which shortened the usable inside space.

LIBELED: 1-26-59, Dist. N.J.

CHARGE: 403(d)—when shipped, the container of the article was so filled as to be misleading, since the use of two hollow dividers between each section of candy and one hollow divider at each end of the container utilized the available space in the container so that the candy occupied only about 45 percent of the volume of a container of this size; such excess packaging material was unnecessary in the packaging of the article, and additional pieces of candy could be packed in the container with no physical difficulty.

DISPOSITION: On 3-5-59, Charles R. Adelson and Richard H. Adelson, general partners, and Jane L. Adelson and Ethel A. Schaper, limited partners, t/a Delson Candy Co., claimed the article and denied that the article was misbranded. On 5-6-59, upon application by the claimant and with the consent of the Government, an order was entered directing the United States marshal to store the article under refrigeration pending a final determination of the case. On 7-13-59, the Government served written interrogatories on the claimant. On 8-12-59, the claimant served written interrogatories on the Government. On 9-11-59, the claimant filed answers to the Government's interrogatories; and thereafter the Government filed answers to the claimant's interrogatories.

The case was tried on 1-6-60 through 1-8-60 before the court. On 2-10-60, the court rendered the following opinion:

WORTENDYKE, *District Judge*: "By its libel of information, the Government prayed seizure and condemnation of an article of food consisting of 174 cases, more or less, each containing 24 ten ounce packages of an article labeled in part 'Delson Thin Mints, Chocolate Covered * * * Delson Candy Company * * * Newark, New York * * *.' [New York, New York.] Pursuant to warrant of seizure, 91 cases of the article were attached by the United States Marshal, who duly served upon the person in charge of the place where the goods were stored, a monition addressed to the owner thereof which was thereafter duly published. In due course a notice of claim was filed by

Richard H. Adelson, one of the partners trading as Delson Candy Company, in behalf of said firm, making claim to the articles attached and praying leave to defend against the complaint for condemnation.

"The proceeding is brought pursuant to the provisions of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 301 et seq., and the complaint charges that the article seized was misbranded when introduced into and while in interstate commerce, within the meaning of the Act, 21 U.S.C. § 343(d), in that 'its container is so filled as to be misleading, since the use of two hollow dividers between each section of candy and one hollow divider at each end of the container utilizes available space in the container so that the candy occupies only about 45 percent of the volume of a container of this size * * *.' In part, the basis alleged for the condemnation sought is that the individual container of the candies is 'slack-filled' to a degree misleading to a prospective retail consumer.

"The pretrial order describes the article and containers as 'chocolate covered mint candies, in boxes containing less units of the product than the exterior dimensions of the box would otherwise permit, by separating by hollow cardboard partitions, portions of the product contained in the package.' The Government concedes that the net weight of claimants' candy contained in each package is as represented on the exterior of the package; it contends nevertheless that the use of such a container 'misleads the average intending purchaser into the assumption that the contents of the package is a maximum amount of individual mint discs which the interior cubic contents of the package would permit.' The Government also takes the position that it did not expect or require any such container to have its interior volume *completely* filled by the pieces of candy enclosed therein. Claimant admits the manufacture, packaging, and shipment in interstate commerce of the seized article, but denies that its packages were either intended to or in fact did deceive the public. On the contrary, claimant contends that the design of the container complained of was adopted solely for the purpose of affording a more efficient and protective package and that it constitutes a recognized advance in the art of candy box design. More specifically, the claimant asserts that the hollow dividers and the type of end structure in and of each of the candy boxes serves and was designed to function as a means of protecting the individual pieces of candy from the effects of pressure and shock in shipment. Both parties recognize that this case presents the single issue of whether the method of packaging employed by the claimant is misleading to the public generally.

"Besides denying that its container is misleading, claimant asserts that the provisions of § 343(d), as applied to claimants' container, would be unconstitutional if it were to be held to be misbranded. Claimants assert that the provisions of 21 U.S.C. § 343(d) are so vague, indefinite and uncertain as to permit the taking of claimants' property without due process of law, in violation of the Fifth Amendment of the United States Constitution. The issue of constitutionality of the statute invoked was argued to the Court preliminarily to the presentation of evidence upon the issues framed by the pleadings, but decision upon this preliminary question was reserved by the Court for determination after hearing all of the evidence. Where there is a possibility that a case may be disposed of on other than constitutional grounds, a constitutional adjudication must be deferred; it being the duty of a Federal Court to avoid an unnecessary decision of a constitutional question. *McLarty v. Borough of Ramsey*, D.C.N.J. 1958, 166 F. Supp. 291, *affd.* 3 Cir. 1949, 270 F. 2d 232.

THE ACCUSED CONTAINER

"Claimants' individual candies are, as stated, chocolate covered mints, circular in shape, having one side slightly convex and the opposite side flat. They are packed and sold in rectangular 'corset-type' boxes with the plane of the individual piece of candy at right angles to the long dimension of the container. The outside dimensions of each box, including the wrapper, are 11.56'' x 1.94'' x 1.75'', comprising an exterior volume of 39.2 cubic inches, but an interior volume of the lower box in which the candies are packed of 30.8 cubic inches. The candy-carrying interior of the lower box is divided into three compartments by means of hollow transverse dividers of cardboard, and each end of that portion of the box consists of a hollow recess extending

longitudinally into and transversely across the interior. The aggregate volume of the two hollow dividers and the two hollow ends is 5.4 cubic inches. Each of these boxes contained a total of 30 candy mints,—ten in each of the three compartments or sections,—but not so snugly packed in each section as to preclude the addition of one mint to each compartment. The exterior of each box was marked with the correct net weight of the candy contents in readily legible characters, and the price charged for the box of candy was competitive with prices throughout the market for similar quantities of merchandise of like quality.

“It is readily apparent from inspection of the interior of any of claimants’ filled boxes that the compartmentation of the box interior and the presence of the hollow dividers and exteriorly recessed ends, prevents all of the packed candies from becoming an undivided continuous mass, and also prevents the uninterrupted conduction of shock throughout such mass. Moreover, it is equally obvious from an inspection of the container that kinetic force applied to either end of the box, which would otherwise be conducted longitudinally throughout its length, is in some degree absorbed by the hollow ends and hollow partitions.

“There were placed in evidence during the trial, boxes of candies of like kind, generally similar exteriorly in shape to the containers herein accused, in some of which there were no interior compartmentation, nor any interiorly extending recess at either end, but in which each unit of candy was separated from others by a square sheet of waxed paper. Still another type of container for similar candy was in evidence, which provided a three-section interior compartmentation, by means of ‘chocolate-board’ (cardboard) partitioning without the hollow characteristics of the partitions and ends employed in the accused boxes. Much testimony was presented respecting the efficacy of the different types of boxes to protect the contained candy from damage in course of shipment; but in none of the types of containers presented to the Court in evidence was one hundred percent of the interior volume of the box occupied by candy. There was, moreover, evidence to the effect that the volume of each candy unit was affected by temperature as well as by the degree of freshness or staleness of the article. Thus, the extent of occupancy of the interior of the box, by the candy, was a variable dependent upon exterior circumstances.

“By removing the hollow ends and dividers, and using single thicknesses of cardboard to serve as dividers and to fill in the ends, a witness for the Government was able to add eleven mints to the contents of the lower box. This, of course, substantially increased the weight of candy in the package. Another Government witness, offered as an expert in surveying consumer opinion attitude, expressed the opinion that from twenty to twenty-five percent of retail consumer purchasers were influenced in selecting a commodity by the size of its package, rather than by its price. Another Government witness testified that he purchased a box of Delson Thin Mints, shortly before the trial, at a self-service supermarket in New York City, and that in selecting the package he noticed that it was price-marked 35¢. As he emerged from the place of purchase, he was interviewed by an investigator for the Federal Food and Drug Administration, who had observed him making his purchase. The investigator opened a package of Delson Thin Mints in the presence of this witness, and upon being asked whether he found in the package what he had anticipated, he testified that he had expected to see far more mints in the package than there were shown to be. Several other witnesses testified for the Government to a similar effect, respecting similar experiences. A Doctor of Philosophy in psychology testified for the Government that he had presented to a succession of individuals samples of types of candy boxes generally similar exteriorly to the package of Delson, and found that each of these persons tended to over-estimate, before opening, the number of pieces of candy contained in each box. Upon these findings this witness concluded that in making judgments of contents from an external observation of the package, the length of the box exerted a greater influence upon the judgment of the estimator than did the indicated net weight of the contents. Another Doctor of Philosophy, university professor and author in the field of economics, expressed the opinion that claimants’ container was a slack-filled container because it was possible for it to hold more pieces of candy than were found to be therein contained. Testimony was also adduced both by the Government and by the claimants respecting the efficacy of the hollow partitions and ends in claimants’ boxes,

in reducing the hazard of crushing and shock damage to the candy contained in their package.

"For the claimants the testimony of a consultant on industrial package design testified that the controlling criteria governing the selection of a form of package are principally two in number, viz: (1) trade and consumer acceptance; and (2) protection of the product contained therein. It was the opinion of this witness that the hollow partitions and ends were intended for and did achieve the protection of the contents against end-to-end and side-to-side shock. The designer of the Delson package testified that the form and construction adopted was for the purpose of eliminating breakage, and that he was aware of no intention on the part of claimants to mislead the purchaser by the use of that form of box.

"From the evidence I conclude that the type of container construction employed by the claimants, which the Government accuses in this case, is efficacious to a degree for the protective purposes contended for by the claimants and was not adopted and is not being used for the purpose of deceiving prospective purchasers respecting the contents of the container. I further find that similar interior box construction is employed by two other nationally known manufacturers of chocolate mint candies.

"The facts in this case are generally similar to those in *United States v. Cataldo*, 1 Cir. 1946, 157 F. 2d 802, which affirmed the action of the District Court in dismissing a libel brought under the Federal Food, Drug, and Cosmetic Act of 1938, 52 Stat. 1040, 21 U.S.C. § 301, et seq., for the condemnation of cartons of boxes of candy shipped in interstate commerce. The libel there charged that the food was misbranded within the meaning of § 403(d) of the Act (21 U.S.C.A. § 343(d)), in that the container was so formed and filled as to be misleading, because the boxes could hold approximately fifty percent more candy than was found therein. In this case, each box measured 1¼" in width by 2" in length, and about 1" in depth, and contained one piece of candy, a half-ounce in weight. Each piece of candy was wrapped with a piece of card wafer and measured approximately 1" in width, 1⅞" in length, and a half-inch in depth. The Appellate Court stated that the question presented was 'whether the containers of the article were so made, formed or filled as to be misleading.' The evidence on the trial in the cited case disclosed that the average dimension per piece of candy was 1.05 cubic inches, the internal volume of the small container was 2.32 cubic inches, and the commodity occupied 45.3 percent of the entire volume of the carton. At page 804 of the opinion of the Court in *Cataldo*, we are reminded that 'Whether or not over 50 percent space in a particular package of candy was slack-filling is a question of fact for the District Court to decide.' The opinion recites, with apparent approval, a statement of the District Judge that 'it would be "stretching the statute all out of proportion to its purpose if it were to find on the evidence in this case, dealing with this particular nougat, the way it is shaped and wrapped, that the container was so made, formed or filled as to be misleading," and that there was nothing "in the shape and size of the larger package or the smaller packages that would be misleading to a person."' The District Court was, therefore, affirmed in its conclusion that it could not be said as a matter of law, either that the product had been misbranded, or that its container had been so made, formed or filled as to be misleading.

"In another similar case, *United States vs. 116 boxes, etc., Arden Assorted Candy Drops*, D.C. Mass. 1948, 80 F. Supp. 911, the Government unsuccessfully sought condemnation of packages of candy charging misbranding under § 403 (d) of the Act. In that case also the package was accused of being slack-filled, where, as a result of the settlement of the contents there was an average air space left in the box after filling of 33⅓ percent. There was no evidence as to how many pieces of candy any consumer would expect to receive from a box of the type complained of. The District Judge there concluded, as a matter of law, that the seized shipment did not violate the Act and that the libel should be dismissed. The Court in that case said, (page 913): 'The question whether the package is misleading is a question of fact. And the standard is not whether experts or men of peculiar training, experience, shrewdness or sophistication would be misled * * *. The standard is whether the container would be likely to mislead the ordinary purchaser of this type of merchandise, not one who was particularly attentive or prudent * * *. In the case at bar no evidence was introduced as to what an ordinary non-infantile purchaser

would expect. But in my view, he would not expect any particular number of lozenges. So long as he received ordinary lozenges not obviously so eccentric in shape as to result in peculiar packaging difficulties, and so long as he received approximately as many of these lozenges as could conveniently be packed in a standard rectangular carton by machine, he would not, in my opinion, be misled.'

"In the case at bar, despite the evidence which indicated that certain purchasers of the accused containers were 'surprised' to find when boxes were opened that there were not more candies therein, and despite the psychological effect of length or size of container upon the inclination of a consumer to purchase a food product, I am not persuaded by the evidence in this case that the Government has carried the burden of proof cast upon it, that the seized articles are misbranded under the section of the statute relied upon. The case is, in my opinion, lacking in adequate proof that the average adult, of normal intelligence, would be induced by the exterior appearance of the accused containers to buy a box of Delson mints with the expectation that it would contain any particular number of individual candies. The evidence in this case is overwhelmingly persuasive that the exigencies of machine filling, handling and shipping of separate pieces of candy in interstate commerce require that less than the total interior volume of the box in which they are contained be occupied by the candies. The accused method of packaging here under consideration involves, within the container, spaces unoccupied by candy. It also appears that the boxes of claimants' candy in evidence, of which the Government complains, would permit the inclusion of more pieces of candy than they customarily contain. The net weight of candy in each package however is disclosed on the exterior thereof, and there is no evidence that the retail price charged for the box of the candy is disproportionate to the net weight nor inappropriate to the quality of the contents. I fail to find in the evidence that the containers used by the claimants are made, formed or filled in such a manner as to be misleading within the contemplation of 21 U.S.C. § 343(d).

"In view of the foregoing findings and conclusions, which shall be deemed compliance with F.R.C.P. 52, it becomes unnecessary to consider the constitutional question upon which decision was reserved at the trial. I, therefore, conclude that the seized articles are not misbranded, and direct that they be restored to the claimants, and that the libel herein be dismissed.

"An appropriate order may be presented according with the views herein expressed."

Thereafter the Government appealed to the United States Court of Appeals for the 3rd Circuit and, on 2-28-61, the following opinion was rendered:

BIGGS, *Chief Judge*: "This is an appeal by the United States from an order of the United States District Court for the District of New Jersey dismissing a libel of information against a number of cases of chocolate covered thin mints manufactured and shipped by the appellee-claimant, Delson Candy Company, in the spring of 1958.

"Under Section 403(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. § 343(d), food must be held to be misbranded 'if its container is so made, formed or filled as to be misleading.' The standard set up by Judge Wyzanski in *United States v. 116 Boxes Etc.*, 80 F. Supp. 911, 913 (D. Mass. 1948), is 'whether the container would be likely to mislead the ordinary purchaser of this type of merchandise . . .' We think this standard is the correct one.

"The opinion of the court below, 180 F. Supp. 863, sets out fully the size, arrangements, and physical set-up of the chocolate-mint boxes which are the subject of the suit. It sums up the evidence of the United States that the containers were so slack-filled as to be misleading and that their structure rendered them no more effective but perhaps less effective in safeguarding their contents than less misleading forms and also the claimant's evidence that its containers were a more efficacious safeguard for its product than other less deceptive containers would have been.

“There are two ways in which a trial court may hold for the claimant in cases such as that at bar. First, the court can find as a fact that the accused package is not made, formed, or filled in such a way that it would deceive the ordinary purchaser as to the quantity of its contents. See *United States v. Cataldo*, 157 F. 2d 802 (1 Cir. 1946) ; *United States v. 116 Boxes, Etc., supra*. Alternatively, the court may find as a fact that even though the form or filling of the package deceives the ordinary purchaser into thinking that it contains more food than it actually does, the form and filling of the package is justified by considerations of safety and is reasonable in the light of available alternative safety features.

“Did the district court in the present case make either of these findings? We conclude that it did not do so.

“First, the court below did not find that the Delson package did not deceive the ordinary purchaser by making him think that it contained more than it actually did contain. The court stated in respect to this issue: ‘The case is, in my opinion, lacking in adequate proof that the average adult, of normal intelligence, would be induced by the exterior appearance of the accused containers to buy a box of Delson mints with the expectation that it would contain any particular number of individual candies.’ 180 F. Supp. at p. 868. This statement is beside the point. The question was not whether the ordinary purchaser would expect to find a particular number of individual candies in the box but whether such a purchaser would expect to find more of the Delson box filled. For example, the purchaser of a crate of apples opens the crate and finds it half filled. To determine whether he was deceived we do not ask whether he expected to find a particular number of individual apples in the crate. We do ask whether he expected to find more of the crate filled. This is the pertinent question. People do not think in terms of the number of individual mints when buying them in containers.¹

“As to the second issue we point out that evidence introduced by the United States tended to show that only 44% of the total volume of the accused container and that only 75% of its practical volume was filled with mints ; that the remainder of the usable space was taken up with hollow cardboard dividers and hollow end pieces. The United States introduced substantial uncontradicted evidence to show that purchasers of the mints, opening the boxes, expected to find far more mints in them than were there. In view of this it is obvious, if there were nothing more in the case, that the containers might well fall within the interdiction of the statute.

“But, and this is a point which we must emphasize, a showing by the United States that the ordinary purchaser, on viewing a container, will believe that it contains significantly more food than in fact it does contain, and was deceived, cannot be dispositive of the issues of such a case as that at bar. A claimant may go forward and show, as the claimant has attempted to do here, that the circumstantial deception was forced upon it by other considerations such as packaging features necessary to safeguard its product. But safety considerations, before they can be held to justify a slack package must be shown to be reasonably necessary in the light of alternative methods of safeguarding the contents. For example, some padding is obviously necessary in egg crates to safeguard the eggs. But, a two-inch cotton cushion between each of the eggs would certainly not be justified even though such excessive padding would serve fully the ends of safety. The deception would outweigh the asserted justification of safety when viewed in the light of a more reasonable alternative such as cardboard dividers.

“The trial court did not make any finding that the Delson slack package was justified by considerations of safety. The court stated only: ‘From the evidence I conclude that the type of container construction employed by the claimant[s], which the Government accuses in this case, is efficacious to a degree for the protective purposes contended for by the claimant[s] and was not adopted and is not being used for the purpose of deceiving prospective purchasers respecting the contents of the container.’ 180 F. Supp. at p. 867.

¹ We think that the court’s misconception of the issue derives from language employed in *United States v. 116 Boxes, Etc.*, 80 F. Supp., 911, 913 (D. Mass. 1948).

The court did find that the container is 'efficacious to a degree'.² But this is not enough. The court has to find that the container's efficacy outweighs its deceptive quality."

Thereafter the matter was remanded to the United States District Court, Dist. N.J., in accordance with the foregoing opinion, both parties filed briefs, and, on 5-29-61, the matter was argued before that court. On 6-26-61, the following findings of fact and conclusions of law were filed:

FINDINGS OF FACT

WORTENDYKE, *District Judge*: "On appeal from this Court's order of February 23, 1960 dismissing the Government's libel of information in this case, the Court of Appeals, 287 F. 2d 246 (1961), vacated the judgement and remanded 'with the direction to proceed as the facts and the law require' because of this Court's failure to make the necessary findings of fact to support the legal conclusions which it reached. This Court's opinion in lieu of findings of fact and conclusions of law (F.R.C.P. 52) was filed February 10, 1960, and is reported at 180 F. Supp. 863. The Court of Appeals concluded that this Court failed to make either of the following findings: (1) 'that the accused package is not made, formed, or filled in such a way that it would deceive the ordinary purchaser as to the quantity of its contents;' (2) 'that even though the form or filling of the package deceives the ordinary purchaser into thinking that it contains more food than it actually does, the form and filling of the package is justified by considerations of safety and is reasonable in the light of available alternative safety features.' As the present writer reads the appellate Court's opinion, one or the other of the foregoing findings of fact is a *sine qua non* to a conclusion of law that claimant's container was not misbranded under 21 U.S.C. § 343(d).

"In compliance with the directive of the United States Court of Appeals for the Third Circuit, I find the following facts in this case:

"1. Claimant's chocolate covered thin mints are approximately circular, but, unlike competitor's mints, are dome-shaped, with one side convex and the other side flat, measuring approximately 1.5 inches in diameter and .28 of an inch in thickness.

"2. The accused package or container in which the mints are packed is a rectangular cardboard box, the outside dimensions of which, inclusive of the wrapper, are 11.56'' x 1.94'' x 1.75'', comprising an exterior volume of 39.2 cubic inches.

"3. There are three compartments or sections of mints in the accused package or container, and each compartment contains ten units, standing on edge in a horizontal row, or 30 mints in all per box.

"4. Each compartment of the accused package is separated by hollow transverse dividers of cardboard which, in the process of manufacturing the box, are stamped from a cardboard sleeve and locked or anchored in place by tabs coming up from the bottom; and each end of the box has a hollow recess extending longitudinally into and transversely across the interior.

"5. The aggregate volume of these dividers and the ends is 5.4 cubic inches.

"6. The slack in the accused packages would permit the addition of one more mint in each of the three compartments of the box, but this is a normal amount of slack, and it exists in the three compartments of the A. & P. Tea Company's 'Warwick' package of chocolate covered thin mints which the Government sought to contrast favorably over claimant's package.

² The court also said: "The evidence in this case is overwhelmingly persuasive that the exigencies of machine filling, handling and shipping of separate pieces of candy in interstate commerce require that less than the total interior volume of the box in which they are contained be occupied by the candies. The accused method of packaging here under consideration involves within the container, spaces unoccupied by candy" 180 F. Supp. at p. 868. This statement is fully supported by the evidence but it cannot carry the case for the claimant. The United States does not argue that the box had to be packed tight. It had argued that Delson mints could have been packed tighter and yet could have been safe, while not misleading the consumer.

Further, it has to find that the available alternative efficacious means are not less deceptive than those actually employed.

Since the court below has not made the necessary findings of fact to support the legal conclusions which it has reached, we will vacate the judgment and remand with the direction to proceed as the facts and the law require.

"7. Having in mind that the accused container is rectangular and that the mints are approximately circular, 83% of the practical volume of the package is filled with mints.

"8. If the accused package were stripped of its dividers and ends, there would be room for six more mints.

"9. Only about 25% of those interviewed by a market research concern used by the Government were motivated in their choice of packages by size rather than price.

"10. A survey of purchasers of various packages of chocolate covered mints, including the A. & P. Tea Company's 'Warwick' package, which uses single-thickness cardboard dividers, showed that the public grossly overestimated the number of mints in all of the packages.

"11. The only purchasers of claimant's package called as witnesses by the Government were Willock, Zucker, Grosso and Calistro, each of whom after purchasing claimant's package, was interviewed by a Food and Drug Administration employee.

"12. It was not shown how many other purchasers of claimant's package were interviewed by the Food and Drug Administration nor was there any evidence that the reactions of these witnesses to the package were typical.

"13. Some of these witnesses were 'surprised' to see dividers in the box, or 'disappointed' in the amount of candy in the box; some had no idea how many mints they expected to find in the package; others expected to find only as many mints as were indicated in the net weight marked on the outside of the box; all would have been displeased on opening the package to have found the mints broken or crushed. One of these witnesses who had not expected to find the dividers in the box, admitted that he had not been deceived a short time previously when he purchased a box of Terry chocolate covered thin mints, although it was shown that the Terry box also uses hollow dividers. He did not feel misled by a demonstration package of the same size, with the mints packed flat in four layers, although it actually contained two less mints than the accused package. Another of these witnesses admitted that his idea as to the number of mints came simply from the stripes on the box wrapper.

"14. Three out of four of the largest manufacturers of chocolate covered thin mints in this country pack them in containers using hollow rather than single-thickness dividers. Hollow double-wall packaging is also widely used for other products in addition to chocolate covered thin mints.

"15. The Government admitted in its answers to interrogatories that it had no record of any member of the public being deceived by the accused container; that it had received no complaints about the container from any city, county or state, or other local regulatory officials; and that the only complaint it had received concerning the container was from Deran Confectionery Co., a competitor of claimant. Claimant itself also received no complaints concerning the accused package during the years it has been in use. Sales of the accused package have increased in those years.

"16. The correct net weight of the candy is disclosed on the wrapper of the accused package, and there is no evidence that the retail price charged for the package is disproportionate to the net weight or inappropriate to the quality of the contents. The claimant has acted in good faith, with no intent that the package should mislead purchasers.

"17. The accused package is not so made, formed or filled as to deceive the ordinary purchaser as to the quantity of its contents. It is not misleading or misbranded.

"18. Chocolate covered thin mints have always presented very difficult and troublesome handling problems in the industry. Claimant's chocolate covered thin mints, being dome-shaped rather than flat on both sides, are even more fragile than most of those of its competitors. They are shipped all over the United States and to Canada, in trucks with other freight—at times with heavy hardware, steel pipes, and the like—and are subjected to frequent transshipment, reshipment and interchange, all necessitating a very strong package. A. & P.'s 'Warrick' packages of mints are shipped directly to the points of destination, most of which are East of the Mississippi River, only to A. & P.'s own stores, and deliveries are customarily suspended during periods of hot weather, thereby giving A. & P. a high measure of control over its product. Claimant's distribution is carried on throughout the year, to many different types of handlers such as candy wholesalers, grocery wholesalers, drug chains

and drugstores, and claimant's control over its product is consequently more limited than is that of A. & P.

"19. The accused package is filled by hand, but other steps in the manufacturing process are performed by machine. The wrapping of the boxes is done by a machine which cuts a foil wrapper from a roll, positions it, and then, by means of devices in the machine, conforms the completed wrapper so that when it comes out of the wrapping machine, the package is ready to go into the shipping carton. During this machine-wrapping process the package is rigidly held and pressure is exerted upon it as the foil wrapping is held on the box so that the printing may be precisely registered.

"20. In the packaging of chocolate covered thin mints it is necessary to compartmentize them in order to protect them from breakage. The A. & P. 'Warwick' box also has three compartments for holding the mints, and there is one and one-half inches of slack in its package. Some slack is necessary in such a package to protect the contents in shipping.

"In 1934 when claimant first began to manufacture chocolate covered thin mints, they were, as in the accused package, packed in a long, narrow or corset-shaped box, with the mints standing on edge in a row, but at that time the mints were separated individually only by pieces of waxed paper. With this type of packaging, with shipments being made to greater distances, breakage was occurring and in an endeavor to correct this, claimant added a three-part divider. Despite this addition, the breakage continued, and after a temporary period during the war when claimant made a higher priced package in which the mints were packed flat, claimant adopted, in 1950, a long corset-shaped eight-ounce box. Because its competitors adopted a larger size corset-shaped box, claimant, in or about 1954, replaced its 8-ounce package with a longer corset-shaped box containing twelve ounces of mints, but having four compartments. This package was similar to the one then in use by Deran. This box also proved unsatisfactory and breakage of the mints continued. Claimant next employed a long box with a three-part divider, which had three 'necks' of corrugated glassine paper, holding a net weight of ten ounces of candy. Although there were 36 mints in that box, they were smaller in size than claimant's present product. That package also proved unsatisfactory after use for only about a year; claimant found that twelve mints in each of the three compartments were too many to permit safe shipment, because he continued to receive complaints from consumers of breakage. In 1956 claimant changed to a hollow divider type of package, similar to one which its competitor Terry had adopted, and holding 30 mints, but by making each piece of candy larger than the former size, the aggregate weight of the contents remained the same—10 ounces. This package also proved unsatisfactory because, with no lateral support for the sides of the dividers, the mints tended to slip beneath the base of the dividers, with consequent breakage and claimant continued to receive complaints.

"20. Claimant submitted its packaging problem to Paramount Carton Corporation, experts in the designing and manufacturing of boxes, who then designed the accused package. The objective which Paramount sought to attain was to produce a box of strong construction which could be manufactured economically and conveniently.

"21. In the various stages of the transition of claimant's package since 1954, the consumer has received exactly the same quantity of candy, that is, 10 ounces in each package. The accused package is stronger and more economical to manufacture than were the preceding packages used by claimant.

"22. In the Government's pressure-machine tests of the accused package, and of competing Deran and 'Warwick' packages, the accused container withstood greater lateral compression in the side-to-side test, but less vertical compression, than either of the other packages. In those tests the candy in the accused package was not damaged in the end-to-end test, even after the package itself reached the failure-point in its resistance to the machine compression.

"23. The hollow ends of the accused container have the functional purpose of absorbing the shock, holding the mints in a set solid position to prevent breakage. The type of divider used in the accused package, being anchored or locked to the bottom of the box, acts as a protective buttress. These hollow ends and dividers serve a functional and utilitarian purpose by affording a greater degree of crush resistance and shock protection than would single-thickness cardboard dividers and ends. The double surface of the walls of

the dividers provides a better cushion for the mints, and the double thickness of the bottom helps to prevent melting from the heat which is employed in the machine-wrapping process. The accused package is better able to deliver the merchandise to the consumer in good condition than is one with single-wall dividers. The accused container can be more economically produced, using a straight line gluing machine of the fastest type available, and producing boxes at the rate of 100,000 a day.

"24. Other manufacturers using single-thickness dividers in packaging chocolate covered thin mints also experienced breakage, and received complaints, even where the boxes contained only eight ounces of mints.

"25. Utilizing a container the same size as that here accused, packing mints flat rather than on edge, only four layers of seven mints each will fit therein if packed to afford reasonable safety in shipment, and the aggregate of 28 mints thus packed would total only 9½ ounces, as compared with the 10 ounces of weight of the thirty mints which claimant packs in the accused package.

"26. The Government's witnesses considered filled a box the same size as the accused container when it contained four layers of seven mints each, despite the fact that it actually contained two less pieces of candy than were packed in the claimant's accused container, and one-half ounce less in weight.

"27. Packages using single-thickness dividers and ends cannot be manufactured with the speed and economy of the accused package, nor have they proven as satisfactory in use. The available alternative means of packaging claimant's chocolate covered thin mints are not less deceptive than those actually employed in the accused package.

"28. The efficacy of claimant's accused package both from the standpoint of protecting the contents and from the standpoint of economy of manufacture, outweighs its alleged deceptive quality.

CONCLUSIONS OF LAW

"1. Claimant's accused package is not misbranded or misleading within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. §§ 301 et seq., and is not in violation thereof.

"2. If applied to bar the use of the accused package, § 403(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. § 343(d), is unconstitutionally vague, indefinite and uncertain, and contravenes the due process clause of the Fifth Amendment of the Constitution of the United States. *United States v. Cohen Grocery Co.*, 1921, 253 U.S. 81; *Penobscot Poultry Co. v. United States*, 1 Cir. 1957, 244 F. 2d 94.

"3. Claimant is entitled to have restored to it the goods which were seized by the United States Marshal in this proceeding.

"4. The libel filed in this proceeding should be dismissed.

"An order may be presented in conformity with the view hereinabove expressed."

The Government again appealed the decision of the district court, and on 3-20-62, the Court of Appeals for the 3rd Circuit heard the matter. On 4-16-62, the Court of Appeals rendered the following opinion (302 F. 2d 724):

PER CURIAM: "This is an appeal from a decision of the District Court for the District of New Jersey dismissing a libel against a number of cases of chocolate covered mints manufactured by the Delson Candy Company. The libel is based upon the charge that the packaging of Delson Mints is so slack that the purchasing public is deceived and that the packaging used by Delson does not serve such functional usefulness as to justify the form of package adopted.

"The case has been here once before. See *UNITED STATES v. 174 CASES, ETC.*, 287 F. 2d 346 (1961). The opinion of the Court, by Chief Judge Biggs, outlined the manner in which a trial court could and should make findings of fact on the issues involved. The case was sent back to the trial court for this purpose.

"The trial court, pursuant to the directions of this Court, did make findings and made them in detail. The conclusion based on those findings is that the libel should be dismissed. 195 F. Supp. 326 (1961).

"Bearing in mind that our function in such a case is not to reverse the trial court unless the fact conclusions are clearly erroneous, we shall affirm in this instance. The findings were responsive to the questions involved. They were based upon consideration of a large amount of testimony. Whether we would agree with each one had we the initial responsibility is not the point here. The sustaining of the findings because not clearly erroneous is, of course, no foundation for a similar conclusion in cases presenting other questions of fact.

"The judgment of the district court will be affirmed."

On 12-10-62, the district court ordered that the article be restored to the claimant on 12-21-62, and that from that date the claimant should be in exclusive possession and control of the article and should bear all subsequently accruing costs for the storage of the article. It was further ordered that the libel of information filed on 1-26-59 be dismissed with prejudice but without costs. On 12-21-62, the article was delivered to the claimant.

29131. Deran thin mints. (F.D.C. No. 43281. S. No. 44-802 P.)

QUANTITY: 172 ctns., each containing 24 10-oz. boxes, at Atlanta, Ga.

SHIPPED: Between 3-5-59 and 4-13-59, from Cambridge, Mass., by Deran Confectionery Co., Inc.

LABEL IN PART: (Box) "Deran's Thin Mints * * * Chocolate Covered Deran Confectionery Co., Inc., Cambridge, Mass."

RESULTS OF INVESTIGATION: Examination showed that each box contained 28 round, chocolate-covered mints which were packed in a two-piece, rectangular cardboard box, the lower part of which was lined with corrugated paper and was separated into three equal parts by means of built-in, hollow, cardboard dividers, with a similar hollow construction at each end.

LIBELED: 6-25-59, N. Dist. Ga.; amended libel 9-18-59.

CHARGE: 403(d), when shipped, the container of the article was so filled as to be misleading, since the use of hollow dividers between each section of candy and a hollow divider at each end of the container utilized available space in the container so that the candy occupied only about 65 percent of the volume of a container of this size; such excess packaging material was unnecessary in the packaging of this article, and additional pieces of candy could be packed in the containers with no physical packaging difficulty.

DISPOSITION: On 7-22-59, Deran Confectionery Co., Inc., filed an answer denying that the article was misbranded and that the use of dividers was unnecessary in the packaging of the article; claimant also moved that the libel be dismissed.

On 9-18-59, the Government filed a motion to amend the libel and served written interrogatories on the defendants. On 12-10-59, the claimant's motion to dismiss was overruled and denied. On 12-14-59, an order for the release of samples to the Government and claimant was filed. On 8-12-62, claimant answered the interrogatories served by the Government. On 1-17-63, the court, with the consent of the Government and the claimant, entered an order which dismissed the action upon motion of the Government without prejudice to the Government's right to have the action reinstated after a final decision in a case entitled: "*United States of America v. 174 cases . . . of an article labeled in part: Delson Thin Mints Chocolate Covered*," and which directed the marshal to retain the custody of the article until otherwise directed by the United States attorney. On 1-17-63, the libel having been dismissed and the claimant having failed to post bond or pay any costs, the court ordered that

the marshal should cause the article to be destroyed after 10 days' notice of the order to the claimant; and providing that the claimant should be entitled to the article upon payment of all costs or by posting a cost bond within 10 days. Thereafter, the article was destroyed.

29132. Candy. (F.D.C. No. 48918. S. Nos. 2-028 V, 2-038 V.)

INFORMATION FILED: 7-24-63, E Dist. S.C., against Imperial Candy Co., Inc., Cayce, S.C., and Charles E. Finley, president and treasurer.

SHIPPED: 10-17-62, from South Carolina to Georgia.

LABEL IN PART: (Pkg.) "Imperials PAT'S NOUGAT * * * NET WT. 1-OZ. OR OVER"; "Imperial's * * * COCONUT BAR 10¢ * * * NET WT. 2½ OZ. OR OVER."

CHARGE: 402(a)(3)—contained insects and insect parts; and 420(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-1-63. Fine of \$500 or 6 months in jail against the defendants jointly.

29133. Candy. (F.D.C. No. 48203. S. Nos. 45-701 V, 45-704 V.)

INFORMATION FILED: 3-4-63, E. Dist. Ark., against Hoffman Candy Co., Inc., North Little Rock, Ark., and Joseph C. Hoffman, president.

SHIPPED: 9-14-62, from Arkansas to Tennessee.

LABEL IN PART: (Pkgs.) "Rainbow Slice 1 Oz. or Over [or "Crunch ⅞ Oz. or Over"] Hoffman Candy Company, North Little Rock, Arkansas."

CHARGE: 402(a)(3)—the Rainbow Slices contained insect fragments, the Crunch contained insects, insect fragments, and rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 6-24-63. Sentence of probation for 2 years.

29134. Candy. (F.D.C. No. 48546. S. Nos. 61-791 T, 6-602 V.)

INFORMATION FILED: 5-1-63, S. Dist. Fla., against Shenandoah Candies, Inc., Miami, Fla.

SHIPPED: 8-3-62 and 9-10-62, from Florida to Massachusetts.

LABEL IN PART: "Date Nut Coconut Tropical Treats Weight 8 Oz. Shenandoah Candies Miami, Florida."

CHARGE: 402(a)(3)—contained insects, insect parts, and rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 8-16-63. \$300 fine.

29135. Candy, flour, and cornmeal mix. (F.D.C. No. 48563. S. Nos. 47-079/82 T, 47-085/6 T, 47-091/3 T, 47-098 T.)

INFORMATION FILED: 9-25-63, W. Dist. Tenn., against Associated Grocers of Memphis, Inc., and Roy S. Carman, general manager.

ALLEGED VIOLATIONS: Between 3-29-62 and 7-28-62, while quantities of candy, flour, and cornmeal mix were being held for sale after shipment in interstate commerce, the defendants caused such articles to be held in a building accessible to insects and to be exposed to contamination by insects which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—portions of the articles contained insects, insect webbing, larvae, cast skins, and excreta; and 402(a)(4)—all lots of the articles were held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 11-22-63. \$1,000 fine against the defendants jointly.

29136. Chocolate candy. (F.D.C. No. 46945. S. No. 4-714 T.)

QUANTITY: 61 cases, each containing 24 bags, at Norfolk, Va.

SHIPPED: 1-12-62, from Chattanooga, Tenn., by Brock Candy Co.

LABEL IN PART: (Bag) "Big Star Chocolate Bridge Mix * * * Net Wt. 9 oz. Distributed by Colonial Stores Incorporated, Atlanta, Georgia."

RESULTS OF INVESTIGATION: The article consisted of brown-colored pieces of candy of various sizes contained in a clear plastic bag. The mandatory information was printed on the bag in small print in brown-colored ink, and was inconspicuous because of the brown-colored candy in the background.

LIBELED: 1-29-62, E. Dist. Va.

CHARGE: 403(f)—when shipped, the information required to appear on the label under 403(e)(1) and (2), 403(i)(2), and 403(k), namely, the distributor's name and address and the quantity of contents statement, the common or usual name of each ingredient, and the statement of artificial color and flavor was not prominently placed on the label with such conspicuousness (as compared with other words and statements on the label) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: The article was claimed by the Brock Candy Co., Chattanooga, Tenn. The Government filed written interrogatories on 4-30-62, which were answered by the claimant on 6-13-62. On 2-15-63, a decree of condemnation was entered and the article was destroyed.

29137. Fruit-filled candy. (F.D.C. No. 49210. S. No. 7-299 X.)

QUANTITY: 16 cases, each containing 24 bags, at Boston, Mass.

SHIPPED: 6-26-63, from Inwood, N.Y., by A&F Candy Manufacturing Co., Inc.

LABEL IN PART: (Bag) "A&F American's Finest Candies Assorted Fruit Filled Ingredients * * * Net Wt. 14 Oz. A&F Candy Mfg. Co., Inwood 96, N.Y."

RESULTS OF INVESTIGATION: The articles were approximately 4 percent short weight.

LIBELED: 7-31-63, Dist. Mass.

CHARGE: 403(e)(2)—when shipped, the label statement "Net Wt. 14 Oz." was inaccurate.

DISPOSITION: 10-14-63. Default—ordered destroyed or given to a charitable institution.

29138. Salt water taffy. (F.D.C. No. 48779. S. No. 21-187 V.)

QUANTITY: 720 cases, each containing 12 15-oz. bags, at Spokane, Wash.

SHIPPED: 5-3-63, from Salt Lake City, Utah, by Glade Candy Co.

LABEL IN PART: (Bag) "Powers Salt Water Taffy."

LIBELED: 5-17-63, E. Dist. Wash.

CHARGE: 403(e) (1)—when shipped, the article failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor.

DISPOSITION: 6-3-63. Consent—claimed by Powers Candy & Nut Co., and relabeled.

EGGS

29139. Frozen eggs. (F.D.C. No. 48949. S. No. 8-033 V.)

QUANTITY: 204 30-lb. cans, at Lowell, Mass.

SHIPPED: 3-14-63, from Brooklyn, N.Y., by Quality Egg Co., Inc.

LABEL IN PART: (Can) "Whole Eggs Malto-Dextrin Added * * * Packed by Quality Egg Co. Inc. * * * Brooklyn 26, N.Y."

LIBELED: 5-3-63, Dist. Mass.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 6-13-63. Consent—claimed by Quality Egg Co., Inc. Segregated; 19 cans destroyed.

29140. Frozen eggs. (F.D.C. No. 49095. S. Nos. 97-077/78 V.)

QUANTITY: 405 40-lb. cans, at Brooklyn, N.Y., in possession of Peterson Packing Corp.

SHIPPED: 3-20-63 and 4-17-63, from San Leandro, Calif.

LABEL IN PART: "Peterson Packing Corp. 187 Duane St. NY Whole Eggs."

RESULTS OF INVESTIGATION: The eggs had been prepared in part from frozen whole eggs, shipped as described above.

LIBELED: 7-30-63, E. Dist. N.Y.

CHARGE: 402(a) (3)—contained decomposed eggs while held for sale.

DISPOSITION: 8-28-63. Consent—claimed by Peterson Packing Corp., and denatured.

29141. Frozen eggs. (F.D.C. No. 46081. S. No. 56-789 R.)

QUANTITY: 62 30-lb. cans at Brooklyn, N.Y.

SHIPPED: 4-8-61, from Newton, Kans., by Hurst Foods, Inc.

LABEL IN PART: "Frozen Whole Eggs * * * Packed by Hurst Foods Inc., Newton, Kansas."

LIBELED: 7-24-61, E. Dist. N.Y.

CHARGE: 402(a) (3)—the article was unfit for food since it had a musty odor when shipped.

DISPOSITION: 9-11-61. Consent—claimed by Hurst Foods, Inc. Segregated; 9 cans destroyed.

29142. Frozen eggs. (F.D.C. No. 49257. S. Nos. 39-189/90 X.)

QUANTITY: 953 30-lb. cans, at Brooklyn, N.Y.

SHIPPED: 7-24-63 and 8-6-63, from Gainesville, Ga., by Hollis Grain Co.

LABEL IN PART: "Blue Ridge Egg Co. Whole Eggs * * * Blairsville, Ga."

LIBELED: 9-13-63, E. Dist. N.Y.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 10-4-63. Consent—claimed by Bender-Goodman Frozen Foods, Inc., New York, N.Y., and denatured.

29143. Frozen eggs. (F.D.C. No. 44597. S. No. 32-690 R.)

QUANTITY: 1,000 30-lb. cans, at Brooklyn, N.Y.

SHIPPED: 4-19-60, from Portland, Oreg., by Oregon Egg & Poultry Co.

LABEL IN PART: "Whole Eggs * * * Oregon Egg & Poultry Co. * * * Portland Oregon."

LIBELED: 6-14-60, E. Dist. N.Y.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 10-24-61. Consent—claimed by Helfer-King, Inc., New York, N.Y., and denatured.

29144. Frozen eggs. (F.D.C. No. 49227. S. No. 457 X.)

QUANTITY: 159 30-lb. cans, at Greenville, S.C.

SHIPPED: Between 7-26-63 and 8-1-63, from Blairsville, Ga., by Blue Ridge Egg Co.

LABEL IN PART: "Blue Ridge Egg Co. Whole Eggs Blairsville, Georgia."

LIBELED: On or about 9-3-63, W. Dist. S.C.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 11-12-63. Default—destruction.

FISH AND SHELLFISH

29145. Frozen fish fillets. (F.D.C. No. 49258. S. Nos. 28-469/71 X.)

QUANTITY: 362 cases, each containing 9 5-lb. pkgs. at Sioux City, Iowa.

SHIPPED: 1-12-63 and 3-13-63, from Gloucester, Mass., by F. W. Bryce, Inc.

LABEL IN PART: (Pkg.) "Breaded Haddock" and "Raw Haddock."

LIBELED: 9-9-63, N. Dist. Iowa.

CHARGE: 402(b)(2)—when shipped, pollock fish had been substituted in whole or in part for haddock; 403(a)—the label statements "Haddock" were false and misleading as applied to products consisting of fish fillets or portions of fish prepared from pollock fish; 403(b)—fillets or portions of fish other than that claimed on the labels had been offered for sale under the name of another food, namely, haddock; 403(e)(1)—the articles failed to bear a label containing the common or usual name of the food; and 403(i)(2)—the article labeled as breaded haddock was fabricated from two or more ingredients and it failed to bear a label containing the common or usual name of each ingredient.

DISPOSITION: 9-30-63. Consent—claimed by Stoller Fisheries, Inc., Spirit Lake, Iowa, and released under bond for relabeling.

29146. Frozen perch fillets. (F.D.C. No. 48987. S. No. 56-068 V.)

QUANTITY: 73 ctns., each containing 5 10-lb. ctns. of cellophane-wrapped fish fillets at Gloucester, Mass., in possession of New England Fillet Co., Inc.

SHIPPED: The fillets were prepared and packed from fish caught outside the territorial limits of the State of Massachusetts in the waters of the Atlantic Ocean by the fishing vessel "Sea Queen" which unloaded on 5-6-63.

LABEL IN PART: (50-lb. ctn.) "Seacrest Brand Ready to Cook Frozen Fillets Packed by New England Fillet Co., Inc. * * * Boston, Mass.," (10-lb. ctn.) "Seacrest Brand * * * Perch Frozen Fillets New England Fillet Co., Inc.,"

and (insert label) "Seacrest Brand Ocean Perch Frosted Fillets To be weighed at time of sale New England Fillet Co., Inc., Boston, Mass."

RESULTS OF INVESTIGATION: Examination showed that approximately 20 per cent of the fillets did not have the scales removed.

LIBELED: 5-27-63, Dist. Mass.

CHARGE: 402(b) (2)—when shipped and while held for sale, fillets with scales had been substituted in part for fillets with scales removed; and 402(a) (3)—contained parasitic copepods.

DISPOSITION: 7-29-63. Default—delivered to a public institution for use as animal feed.

29147. Frozen perch fillets. (F.D.C. No. 49255. S. Nos. 7-787/90 X.)

QUANTITY: 1,394 ctns., each containing 12 1-lb. pkgs., at Portland, Maine.

SHIPPED: The fillets were prepared and packed at Portland, Maine, from fish caught by the fishing vessel "Kennebec," in the waters of the Atlantic Ocean outside the territorial limits of the State of Maine, which vessel landed the fish at Portland, on or about 8-13-63.

LIBELED: 9-9-63, Dist. Maine.

CHARGE: 402(a) (3)—contained decomposed fish fillets when shipped.

DISPOSITION: 10-3-63. Consent—claimed by Fulham Bros., Inc., Portland, Maine. Reconditioned; 9,036 lbs. destroyed.

29148. Frozen fish sticks. (F.D.C. No. 48891. S. Nos. 6-033 V, 6-049 V, 33-471 V.)

INFORMATION FILED: 9-13-63, Dist. Mass., against Fulham Bros., Inc., Boston, Mass.

SHIPPED: Between 10-19-62 and 10-29-62, from Massachusetts to Connecticut and Minnesota.

LABEL IN PART: (Pkg.) "18 Haddock Fishsticks * * * A Product of Fulham Brothers, Inc. General Offices, Boston, Mass., U.S.A. * * * Contains: Haddock, Toasted Wheat, Wheat Flour, Corn Flour, Dried Eggs, Non-Fat Milk Solids, Salt, Spices, Leavening, Vegetable Oil and Monosodium Glutamate"; "Finast 18 Haddock Fishsticks Net Wt. 14 oz. Packed For First National Stores, Inc. * * * Somerville, Mass."

CHARGE: 402(a) (3)—contained insects and insect and cockroach parts; 402(a) (4)—prepared under insanitary conditions; 403(a)—the label statement "Haddock" was false and misleading as applied to portions of the article which consisted of codfish; and 403(b)—portions of the article were offered for sale under the name of another food, namely, haddock.

PLEA: Guilty.

DISPOSITION: 9-23-63. \$5,000 fine.

29149. Dried abalone. (F.D.C. No. 47271. S. No. 74-961 T.)

QUANTITY: 28 50-lb. cases at San Francisco, Calif.

SHIPPED: Between 1-17-62 and 2-8-62, from Kobe, Japan.

LIBELED: 3-29-62, N. Dist. Calif.

CHARGE: 402(a) (3)—contained moldy abalone meat while held for sale.

DISPOSITION: 5-22-62. Consent—claimed by Wing Sing Chong Co., San Francisco, Calif., and denatured.

29150. Frozen oysters. (F.D.C. No. 49216. S. Nos. 54-612/4 V.)

QUANTITY: 371 cases, 12 cans each, at Omaha, Nebr.

SHIPPED: 1-11-63, from Norfolk, Va., by Ballard Fish & Oyster Co., Inc.

LABEL IN PART: (Can) "VA 207 Ballard Egg Island Brand Frozen Sea-Fresh Oysters * * * Net Weight 12 Ozs. Avoir, (11.3 Fluid oz.) * * * Packed by Ballard Fish & Oyster Co., Inc., Norfolk, Va."

RESULTS OF INVESTIGATION: Examination showed that the average drained weight was between 36.3 percent and 39.9 percent.

LIBELED: 8-7-63, Dist. Nebr.

CHARGE: 402(b)(2)—when shipped, water had been substituted in part for oysters; 403(a)—the label statement "Oysters" was false and misleading as applied to a product consisting in part of water; and 403(i)(2)—the article failed to bear the common or usual name of each ingredient since added water had not been declared.

DISPOSITION: 10-11-63. Default—destruction.

29151. Frozen breaded shrimp. (F.D.C. No. 49201. S. No. 25-366 X.)

QUANTITY: 298 ctns., each containing 12 9-oz. pkgs., at Lansing, Mich.

SHIPPED: 6-20-63, from Tampa, Fla., by Singleton Packing Corp.

LABEL IN PART: (Pkg.) "Product of U.S.A. Singleton Brand 21 Shrimp in the Basket * * * Ingredients * * * Packed by Singleton Packing Corp., Tampa, Florida."

LIBELED: 7-26-63, W. Dist. Mich.

CHARGE: 402(a)(3)—contained *E. coli*, and coliform bacteria; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 10-10-63. Default—destruction.

29152. Canned sardines in tomato sauce. (F.D.C. No. 49291. S. No. 31-533 X.)

QUANTITY: 8,433 cases, each containing 24 15-oz. cans, at Terminal Island, Calif.

SHIPPED: 10-24-62 and 11-25-62, from Cape Town, South Africa, by Federal Fish Packer.

LABEL IN PART: (Can) "VAN CAMP'S SARDINES Packed in Tomato Sauce Van Camp Sea Food Company Distributors Port of Long Beach, Calif. Product of South West Africa."

LIBELED: 8-28-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained decomposed tomato material when shipped.

DISPOSITION: 10-16-63. Consent—claimed by Van Camp Sea Food Co. for export to original foreign supplier.

FRUITS AND VEGETABLES

FRESH FRUIT

29153. Fresh blueberries. (F.D.C. No. 47650. S. No. 6-338 X.)

QUANTITY: 20 crates, each containing 16 1-qt. boxes, at Boston, Mass.

SHIPPED: 7-29-63, from New Durham, N.H., by Walter J. Searles.

LIBELED: 7-30-63, Dist. Mass.

CHARGE: 402(a)(3)—contained maggots when shipped.

DISPOSITION: 8-29-63. Default—destruction.

MISCELLANEOUS FRUIT PRODUCT

29154. Canned apricot concentrate. (F.D.C. No. 49028. S. No. 46-632 X.)

QUANTITY: 134 cases, each containing 6 unlabeled cans, at St. Louis. Mo.

SHIPPED: 12-5-61, from San Jose, Calif., by Santa Clara Nut Co.

LABEL IN PART: (Case) "Six No. 10 Tins Apricot Concentrate."

LIBELED: 7-10-63, E. Dist. Mo.

CHARGE: 402(a)(3)—contained decomposed apricot concentrate while held for sale; 403(e)—when shipped, the article was in package form and failed to bear a label containing (1) the name and address of the manufacturer, packer, or distributor and (2) an accurate statement of the quantity of contents; and 403(i)(1)—its label failed to bear the common or usual name of the food.

DISPOSITION: 8-30-63. Default—destruction.

VEGETABLES AND VEGETABLE PRODUCTS*

29155. Dried pinto beans. (Inj. No. 433.)

COMPLAINT FOR INJUNCTION FILED: 7-5-62, Dist. Idaho, against Axel J. Tillman, t/a Tillman & Son Co., Twin Falls, Idaho.

CHARGE: The complaint alleged that the defendant operated at Twin Falls, Idaho, a warehouse used for the storage and distribution of, among other things, beans for human consumption; that the defendant was shipping in interstate commerce such food which was adulterated within the meaning of 402(a)(3) and (4), in that the food contained uric acid and bird excreta, and was held at the defendant's warehouse at Twin Falls, Idaho, under insanitary conditions.

It was alleged further that the insanitary conditions of the defendant's warehouse resulted from and consisted of the presence of the following: widespread infestation by rodents and birds, which animals readily entered the warehouse by such means as through open loading doors, through a dust exhaust opening, through an overlapping siding, through a hole in the east door, or under loosely fitting doors; six dead mice in the southeast corner of the warehouse; approximately 15 mouse pellets per foot along the south and east walls; additional pellets between the west wall studs; bags of beans and peas stored in the warehouse but not destined for interstate commerce which were coated with bird excreta and rodent pellets, and one of which bags supported a mouse nest; cleaning equipment splattered with bird excreta; and as many as 10 to 15 sparrows flying and roosting in the building at any one time.

It was alleged further that the defendant was well aware that his activities were in violation of the law; that inspections of the defendant's warehouse at Twin Falls, Idaho, were made on 11-14-61, 12-11/13-61, and 3-6/9-62, by inspectors of the Food and Drug Administration; that at each inspection evidence of rodent and bird infestation was readily visible; that the defendant has been aware from the first inspection that beans for human consumption

*See also Nos. 29104, 29109.

were being stored under insanitary conditions in the warehouse; and that despite the warnings conveyed to the defendant by the inspections, the defendant had failed to correct the insanitary conditions at the warehouse and continued to ship in interstate commerce, beans which were adulterated as specified above.

DISPOSITION: On 7-5-62, the defendant having consented, the court entered a decree of permanently enjoining the defendant from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce in violation of the law, beans for human consumption, and any similar article of food then held at the defendant's warehouse at Twin Falls, Idaho, unless and until: (a) the warehouse was thoroughly cleaned and renovated and rendered suitable for use in connection with the storage of beans for human consumption and any similar article of food, namely, unless and until all rodent and bird filth was removed from the warehouse; all rodent and bird infestation in and about the warehouse was eliminated; the means of ingress and egress of the warehouse by rodents and birds were closed; and any similar insanitary conditions which may result in beans for human consumption and any similar article of food being contaminated with filth while held at the warehouse were eliminated; and (b) all of the beans which were on hand at the warehouse at the time the warehouse was cleaned, renovated, and rendered suitable for the storage of food for human consumption were destroyed, denatured for use as animal feed or as seed, or cleaned, or otherwise brought into compliance with the law under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare and thus brought into compliance with the law.

The defendant was further permanently enjoined from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce in violation of the law, beans for human consumption and any similar article of food hereafter received and held by the defendant which food was adulterated within the meaning of 402(a)(3) in that it consisted in part of a filthy substance, and within the meaning of 402(a)(4) in that it had been held under insanitary conditions whereby it may have become contaminated with filth.

29156. Dried pinto beans. (F.D.C. No. 48770. S. No. 32-526 V.)

QUANTITY: 405 100-lb. bags, at Chula Vista, Calif.

SHIPPED: 4-22-63, from Buhl, Idaho, by Bean Growers Warehouse Association, Inc.

LABEL IN PART: (Bag) "OUTWEST BRAND IDAHO PINTO BEANS Packed by Bean Growers Whse. Assn., Inc., Twin Falls, Idaho."

LIBELED: 5-10-63, S. Dist. Calif.

CHARGE: 402(a)(4)—packed and held under insanitary conditions when shipped.

DISPOSITION: 9-13-63. Consent—claimed by Bean Growers Warehouse Association, Inc., of Twin Falls, Idaho; 21 bags converted into animal feed and the remainder denatured for seed use.

29157. Dried pinto beans. (F.D.C. No. 49145. S. No. 22-673 V.)

INFORMATION FILED: 9-16-63, Dist. Colo., against Max M. Osborn, t/a Osborn Bean & Elevator Co., Fruita, Colo.

SHIPPED: Between 3-12-63 and 3-29-63, from Colorado to New Mexico.

LABEL IN PART: (Bag) "100 Lbs. Net Weight * * * Recleaned Pinto Beans * * * Packed By Osborn Bean & Elevator Co. Fruita, Colorado."

CHARGE: 402(a)(3)—contained mammalian urine; and 402(a)(4)—packed and held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-18-63. \$250 fine.

29158. Dried Great Northern beans and dried pinto beans. (F.D.C. No. 49035. S. No. 45-945/6 X.)

QUANTITY: 15 100-lb. bags at Jonesboro, Ark., in possession of Puryear Grocery Co.

SHIPPED: Between 11-24-62 and 4-4-63, from Morrill, Nebr.

LIBELED: 7-12-63, E. Dist. Ark.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-19-63. Default—delivered to a public institution for use as animal feed.

29159. Garbanzo beans. (F.D.C. No. 49211. S. No. 20-311 X.)

QUANTITY: 33 100-lb. bags, at Athens, Tex.

SHIPPED: 11-9-62, from West Los Angeles, Calif.

LIBELED: 7-30-63, E. Dist. Tex.

CHARGE: 402(a)(3)—contained insects, insect parts, and insect excreta while held for sale.

DISPOSITION: 9-4-63. Default—delivered to a public institution for use as animal feed.

29160. Canned butter beans and canned kidney beans. (F.D.C. No. 49130. S. Nos. 22-807 V, 36-319/20 V, 45-018 V.)

INFORMATION FILED: 9-12-63, E. Dist. Okla., against Baron Canning Co., a partnership, Westville, Okla., and Grover F. Howard, partner and manager.

SHIPPED: Between 10-17-62 and 10-20-62, from Oklahoma to Alabama, Illinois, and Colorado.

LABEL IN PART: (Can) "Steele's Butter Beans [or "Green & White Lima Beans"] Net Contents 15 Ounces Steele Canning Co., Packers & Distr., Springdale, Arkansas," "Happy Host Butter Beans Net Weight 15 Ozs. Avd. Distributed by The Cooter Company San Francisco, Calif.," "California's Nugget Brand Light Red Kidney Beans Net Contents 6 Lbs. 12 oz. Frank M. Wilson Company Distributors Stockton, Calif. Distributed Exclusively By Nugget Distributors."

CHARGE: 402(a)(3)—contained insects and insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-7-63. Each defendant fined \$50.

29161. Canned green beans. (F.D.C. No. 49347. S. No. 28-812 X.)

QUANTITY: 200 cases, each containing 24 15½-oz. cans, at Topeka, Kans.

SHIPPED: 2-3-63, from Warrensburg, Mo.

RESULTS OF INVESTIGATION: Examination showed that the article was undergoing bacterial decomposition.

LIBELED: 9-23-63, Dist. Kans.

CHARGE: 402(a)(3)—consisted of a decomposed substance while held for sale.

DISPOSITION: 11-1-63. Default—destruction.

29162. Dried red beans and dried black-eyed beans. (F.D.C. No. 48895. S. Nos. 1-094 R, 59-267 V.)

INFORMATION FILED: 7-17-63, S. Dist. Fla., against Hammond Milling Co., a corporation, Hialeah, Fla., and Richard H. Hammond, Sr., president.

ALLEGED VIOLATIONS: Between 2-25-60 and 2-13-63, while quantities of beans were being held for sale after shipment in interstate commerce, the defendants caused such beans to be held in a building accessible to rodents, birds, and insects and to be exposed to contamination by rodents, birds, and insects, which acts resulted in such beans being adulterated.

CHARGE: 402(a)(3)—contained rodent urine and rodent excreta pellets; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 10-11-63. Corporation fined \$400 and individual fined \$100.

29163. Soybeans. (F.D.C. No. 48783. S. Nos. 47-501/4 V.)

QUANTITY: 406,080 lbs. at Memphis, Tenn.

SHIPPED: 5-9-63 and 5-13-63, from Patterson, Ark., by Farmers Granary, Inc.

LIBELED: 5-20-63, W. Dist. Tenn.

CHARGE: 402(a)(1)—when shipped, contained an added poisonous and deleterious substance, namely, crotalaria seeds, which may render the article injurious to health.

DISPOSITION: 5-23-63. Consent—claimed by Cook Grains, Inc., Memphis, Tenn. Segregated; Crotalaria seeds destroyed.

29164. Canned kidney beans. (F.D.C. No. 47497. S. Nos. 28-523/4 T.)

QUANTITY: 7,433 cases, each containing 24 300-size cans, at Nebraska City, Nebr., in possession of Morton House Kitchens, Inc.

SHIPPED: The article was prepared and packed from bulk beans shipped on 3-20-61 and 6-23-61, from Edmore, Mich., and Lansing, Mich.

LIBELED: 5-18-62, Dist. Nebr.

CHARGE: 402(a)(3)—contained insect larvae, insect parts, insect fragments and rodent hair fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 11-9-62. Consent—claimed by Morton House Kitchens, Inc. Segregated; 3,452 cases destroyed.

29165. Canned artichoke hearts. (F.D.C. No. 48769. S. Nos. 80-418/19 V.)

QUANTITY: 450 4¾-oz. cans, at San Francisco, Calif.

SHIPPED: 1-25-62, from Molina de Segura, Spain.

LIBELED: 5-16-63, N. Dist. Calif.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 6-26-63. Default—destruction.

29166. Canned artichoke hearts. (F.D.C. No. 49010. S. Nos. 32-000/1 V.)

QUANTITY: 108 cases, each containing 24 15-oz. cans, at Los Angeles, Calif.

SHIPPED: 12-15-61, from Alicante, Spain.

RESULTS OF INVESTIGATION: Examination showed that the article was undergoing chemical decomposition.

LIBELED: 6-18-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 7-10-63. Default—destruction.

29167. Canned artichoke hearts. (F.D.C. No. 49087. S. No. 51-475 V.)

QUANTITY: 297 cases, each containing 12 15-oz. cans, at Seattle, Wash.

SHIPPED: 7-28-61, from Molina de Seguna, Murcia, Spain.

LIBELED: 6-24-63, W. Dist. Wash.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 9-6-63. Default—destruction.

29168. Potatoes. (F.D.C. No. 49265. S. No. 47-308 X.)

QUANTITY: 65 bags at Peoria, Ill.

SHIPPED: 6-26-63, from Lafayette, La., by Friedman & Broussard.

LABEL IN PART: (Bag) "100 Lb. Net Dove Brand U.S. No. 1 Louisiana Potatoes Packed by Ignace Venable, Church Point, La."

LIBELED: 8-7-63, S. Dist. Ill.

CHARGE: 402(a)(2)(B)—when shipped, the article was a raw agricultural commodity and contained pesticide chemicals, namely, aldrin and dieldrin, which were unsafe under 408(a) since the quantity of such pesticide chemicals on potatoes was not within the limits of the tolerances prescribed by regulations.

DISPOSITION: 9-6-63. Default—destruction.

29169. Red potatoes. (F.D.C. No. 49037. S. No. 45-809 X.)

QUANTITY: 447 bales, each containing 5 10-lb. bags, at Peoria, Ill.

SHIPPED: 6-26-63, from Lafayette, La., by Coburn's Supply Co.

LABEL IN PART: (Bag) "New Red Potatoes U.S. No. 1 * * * Packed by Friedman and Broussard Lafayette, Louisiana."

LIBELED: 7-17-63, S. Dist. Ill.

CHARGE: 402(a)(2)(B)—the article was a raw agricultural commodity and, when shipped, it contained pesticide chemicals, namely, aldrin and dieldrin, which were unsafe within the meaning of 408(a), since the quantity of such pesticide chemicals on potatoes was not within the limits of the tolerances prescribed by regulations.

DISPOSITION: 8-9-63. Default—destruction.

29170. Frozen french fried potatoes (2 seizure actions). (F.D.C. Nos. 49405, 49422. S. Nos. 29-655 X, 29-664 X, 29-666 X.)

QUANTITY: 51 cases, 155 cases, and 210 cases, each case containing 6 5-lb. ctns., at Omaha, Nebr.

SHIPPED: 9-9-63, from Crookston, Minn., by Jiffy Fry, Inc.

LABEL IN PART: (Case) "6 Pack * * * Crinkle Cut Mr. Jiffy's Frozen French Fried Potatoes Manufactured By Jiffy Fry, Inc., Crookston, Minnesota."

LIBELED: 10-9-63, 10-18-63, Dist. Nebr.

CHARGE: 402(a)(3)—when shipped, the 51-case lot and the 210-case lot contained insect parts; and 402(a)(4)—all lots prepared and packed under insanitary conditions.

DISPOSITION: 12-4-63; 12-10-63. Default—destruction.

29171. Canned sweetpotatoes. (F.D.C. No. 49114. S. No. 1-866 X.)

QUANTITY: 213 cases, each containing 24 1-lb. 13-oz. cans, at Tampa, Fla.

SHIPPED: 5-27-63, from Tabor City, N.C., by Corbett Sales Co.

LABELS IN PART: (Can) "Sweet Lue Whole & Cut Sweet Potatoes (Louisiana Yams) * * * Packed by Dupuis Canning Co., Inc. Cecilia, Louisiana," and "Southern Queen Sweet Potato Yams Whole And Cut In Syrup * * * Packed by Corbett Canning Company, Inc., Cecilia, Louisiana."

LIBELED: 7-23-63, M. Dist. Fla.

CHARGE: 402(a)(3)—when shipped, contained decomposed sweetpotatoes; and 403(e)(2)—some of the article failed to bear a label containing an accurate statement of the quantity of the contents.

DISPOSITION: 8-26-63. Default—destruction.

TOMATOES AND TOMATO PRODUCTS

29172. Canned tomatoes. (F.D.C. No. 49389. S. No. 12-024 X.)

QUANTITY: 208 cases, each containing 24 10-oz. cans, at Chicago, Ill.

SHIPPED: 4-1-63 and 5-14-63, from Rosemead, Calif., by La Victoria Foods, Inc.

LABEL IN PART: (Can) "Marca La Victoria Tomatillo Entero Whole Green Spanish Tomatoes * * * Packed by La Victoria Foods, Inc., Rosemead, Calif."

LIBELED: 10-11-63, N. Dist. Ill.

CHARGE: 402(a)(3)—contained insect-damaged tomatoes and decomposed tomatoes when shipped.

DISPOSITION: 11-12-63. Default—destruction.

29173. Canned tomato puree. (F.D.C. No. 48781. S. No. 80-282 V.)

QUANTITY: 96 cases, each containing 6 6-lb. 9-oz. cans, at Cleveland, Ohio.

SHIPPED: 9-25-62, from Santa Clara, Calif.

LIBELED: 5-20-63, N. Dist. Ohio.

CHARGE: 402(a)(3)—consisted of a decomposed substance while held for sale.

DISPOSITION: 6-18-63. Default—destruction.

29174. Canned tomato paste. (F.D.C. No. 48690. S. No. 34-169 V.)

QUANTITY: 381 cases, each containing 6 6-lb. 15-oz. cans, at St. Paul, Minn.

SHIPPED: 10-15-61, from San Jose, Calif.

RESULTS OF INVESTIGATION: Examination showed that the article was undergoing chemical decomposition.

LIBELED: 1-30-63, Dist. Minn.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 3-25-63. Default—destruction.

29175. Spaghetti sauce. (F.D.C. No. 49060. S. No. 47-409 X.)

QUANTITY: 45 cases, each containing 24 10¾-oz. cans, at St. Louis, Mo.

SHIPPED: 12-26-61, from Vineland, N.J.

RESULTS OF INVESTIGATION: Examination showed that the article was undergoing chemical decomposition.

LIBELED: 7-29-63, E. Dist. Mo.

CHARGE: 402(a) (3)—contained a decomposed substance while held for sale.

DISPOSITION: 9-11-63. Default—destruction.

NUTS AND NUT PRODUCTS

29176. Shelled peanuts. (F.D.C. No. 48991. S. Nos. 8-953 V, 56-060 V.)

QUANTITY: 408 125-lb. bags, at Everett, Mass., in possession of John W. Leavitt Co., Inc.

SHIPPED: 2-27-63 and 3-29-63, from Enfield and Ahoskie, N.C.

LIBELED: 5-27-63, Dist. Mass.

CHARGE: 402(a) (3)—contained insect larvae, insect pupae, and insect parts; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 6-14-63. Consent—claimed by John W. Leavitt Co., Inc. Segregated; 125 lbs. destroyed.

29177. Shelled pecans. (F.D.C. No. 48817. S. No. 51-716 V.)

QUANTITY: 13 30-lb. boxes, at Tacoma, Wash.

SHIPPED: 1-18-63, from San Antonio, Tex., by Azar & Solomon Co.

LABEL IN PART: (Box) "Shelled Pecans Shelled and Packed by Azar and Solomon San Antonio, Texas * * * Contents Fancy Large Med Pieces."

LIBELED: 3-19-63, W. Dist. Wash.

CHARGE: 402(a) (3)—contained *E. coli*; and 402(a) (4)—prepared and packed under insanitary conditions.

DISPOSITION: 5-16-63. Consent—claimed by George Azar and Shafica Azar, t/a Azar & Solomon, San Antonio, Tex., and reconditioned.

29178. Ground pecans. (F.D.C. No. 48778. S. Nos. 83-885/86 V.)

QUANTITY: 160 30-lb. cases, and 268 cases, each containing 12 5-oz. pkgs., at St. Paul, Minn.

SHIPPED: 12-8-62, from Natchez, Miss., by Natchez Pecan Shelling Co.

LABEL IN PART: (30-lb. case) "Meal * * * Natchez Pecan Shelling Company, Natchez, Mississippi" and (pkg.) "Fisher's Fine Ground Pecan * * * Fisher's Nut Company St. Paul, Minnesota."

RESULTS OF INVESTIGATION: The article had been shipped in 30-lb. bulk cases and had been repacked, in part, into 5-oz. packages by the dealer.

LIBELED: 5-16-63, Dist. Minn.

CHARGE: 402(a) (3)—contained insects, insect fragments, and shell fragments which caused product to be gritty and bitter when shipped.

DISPOSITION: 10-1-63. Default—ordered destroyed or denatured for animal food.

29179. Pecan meal. (F.D.C. No. 48642. S. No. 13-443 V.)

QUANTITY: 50 boxes, each containing 30 lbs., at Chicago, Ill.

SHIPPED: Between 12-14-62 and 1-7-63, from San Antonio, Tex., by Sunshine Pecan Co.

LABEL IN PART: (Box) "Contents Pecan Meal A * * * From Sunshine Pecan Co. 802 San Fernando St. San Antonio 7, Texas."

LIBELED: 2-19-63, N. Dist. Ill.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 3-5-63. Default—destruction.

29180. Shelled walnuts. (F.D.C. Nos. 48443, 48484. S. Nos. 24-269 V, 51-682 V.)

QUANTITY: 63 25-lb. cases at Youngstown, Ohio, and 50 25-lb. cases at Seattle, Wash.

SHIPPED: 10-24-62 and 11-8-62, from Visalia, Calif., by Associated Nut Growers.

LABEL IN PART: (Case) "California Shelled Walnuts Light Amber Halves & Pieces * * * Packed by Associated Nut Growers Visalia, Calif."

LIBELED: 12-31-62; 1-3-63, W. Dist. Wash., N. Dist. Ohio.

CHARGE: 402(a)(3)—the articles contained live insects, insect excreta pellets, insect-damaged nuts, insect cast skins, insect webbing; and 402(a)(4)—the 63-case lot was prepared and packed under insanitary conditions.

DISPOSITION: 2-21-63; 5-15-63. Consent—claimed by Associated Nut Growers, Visalia, Calif. Segregated and reconditioned; 71 lbs. destroyed.

29181. Shelled walnuts. (F.D.C. No. 48917. S. Nos. 24-269 V, 25-372 V, 51-682 V, 52-680 V.)

INFORMATION FILED: 8-30-63, S. Dist. Calif., against Phillip A. Nelson, t/a Associated Nut Growers, Visalia, Calif.

SHIPPED: Between 10-16-62 and 11-8-62, from California to Ohio and Washington.

LABEL IN PART: (Case) "California Shelled Walnuts * * * Light Light Amber * * * Halves & Pieces 25 Lbs. Net Weight * * * Packed By Associated Nut Growers * * * Visalia, Calif., U.S.A."

CHARGE: 402(a)(3)—contained live insects, insect larvae, insect excreta pellets, cast skins, webbing and insect-damaged nuts; and 402(a)(4)—prepared, packed, and held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 11-26-63. Probation for 1 year.

29182. Unshelled mixed nuts. (F.D.C. No. 46821. S. Nos. 25-265 T, 25-271 T.)

QUANTITY: 1,300 cases of 24 1-lb. bags, and 110 50-lb. bags. at Detroit, Mich.

SHIPPED: 10-13-61, from New York, N.Y., by Graham Co., Inc.

LABEL IN PART: (Bag) "Broadway Extra Fancy Mixed Nuts Walnuts, Almonds, Pecans," and "Red-Bow Deluxe Mixed Nuts Brazils, Almonds, Pecans."

LIBELED: 11-30-61, E. Dist. Mich.

CHARGE: 402(a)(3)—contained insect-infested nuts, gummy, moldy nuts, and was otherwise unfit for food by reason of the presence of empty almond shells when shipped.

DISPOSITION: 2-19-62. Consent—claimed by Graham Co., New York, N.Y. Segregated; 571 lbs. denatured.

29183. Shelled walnuts and shelled filberts. (F.D.C. No. 48754. S. Nos. 27-197/8 V.)

QUANTITY: 40 35-lb. cases of walnut and filbert meats, and 145 30-lb. cases of walnut meats, at Des Moines, Iowa.

SHIPPED: 3-2-63, from Dundee, Oreg., by Compton Nut Co.

LABEL IN PART: "Walnut-Filbert Meats Compton Nut Company, P.O. Box 1, Dundee, Oregon," "Nuggets L. Oregon Walnut Meats Packed by Shriver Nut Co., Dundee, Oregon."

LIBELED: 4-25-63, S. Dist. Iowa.

CHARGE: 402(a) (3)—contained *E. coli* when shipped.

DISPOSITION: 5-8-63. Consent—claimed by Peanut Products Co., and Compton Nut Co., and reconditioned.

OLEOMARGARINE

29184. Oleomargarine. (F.D.C. No. 45283. S. No. 14-523 R.)

QUANTITY: 69 cases, each containing 30 1-lb. pkgs. of 4 individually wrapped $\frac{1}{4}$ -lb. sticks, at Nashville, Tenn.

SHIPPED: 11-2-60, from Hammond, Ind., by Lever Bros.

LABEL IN PART: (1-lb. pkg.) "Summer Country * * * Margarine * * * Contains * * * Vitamin A, * * * Vitamin D * * * Plus protein, calcium, riboflavin, and phosphorous * * * Lever Bros., New York, N.Y."

LIBELED: 12-8-60, M. Dist. Tenn.

CHARGE: 403(a)—when shipped, the label statement "High-Nutrition" in the setting which had been created by the advertising for the article, represented and suggested that the article was significantly higher in nutrition than margarine and similar spreads available, which representations and suggestions were false and misleading since they were contrary to fact; the label contained statements referring to a "high-priced spread" which suggested and implied that the article contained significantly greater nutrient content than butter, which statements were false and misleading, since the article did not contain a significantly greater nutrient content than butter; the label bore statements which represented and suggested that the article contained significant amounts of ascorbic acid, niacin, riboflavin, thiamin, phosphorous, calcium and protein for special dietary use; which statements were false and misleading, since the article did not contain significant amounts of such nutrients for special dietary use; and the label statements "made especially for growing children" and "you get the good things growing children need everyday" represented and suggested that the article was of especial value in the promotion of growth of children, and that the article contained significant amounts of all nutrients needed by growing children to maintain good health, which representations and suggestions were false and misleading since they were contrary to fact.

DISPOSITION: On 1-3-61, the article was claimed by Lever Bros. Co., and on 3-8-61, the claimant filed an answer denying that the article was misbranded. On or about 12-11-62, the Government served written interrogatories on the claimant. On or about 2-26-63, the claimant filed objections to the written

interrogatories. On 3-26-63, a decree of condemnation was entered in which the claimant represented to the court that Summer Country Margarine, the product proceeded against, was not then being manufactured by the claimant, that the claimant denied the product in any respect violated the law, that the claimant believed no useful purpose would be served by further contesting the charges of the libel, and that without admitting any of the issues of fact or law the claimant consented to the decree of condemnation and to the delivery of the article to a charitable institution. On 4-18-63, an amended order was filed which ordered the article destroyed since it was no longer fit for human consumption due to the long period of time it had been stored.

SPICES, FLAVORS, AND SEASONING MATERIALS

29185. Celery seed. (F.D.C. No. 49392. S. No. 45-770 X.)

QUANTITY: 5 128-lb. bags at St. Louis, Mo., in possession of Star Coffee Co.

SHIPPED: 5-23-63, from Brooklyn, N.Y.

LIBELED: 10-11-63, E. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: On or about 10-15-63, Star Coffee Co. claimed the article, denied that the article was adulterated, prayed the court for leave to destroy the article, and further prayed that upon such destruction the action be dismissed. On 11-6-63, in accordance with the claimant's prayer and on motion of the parties, the court ordered that the claimant destroy the article and that upon such destruction the action be dismissed. On 12-20-63, the article having been destroyed, the libel was dismissed.

29186. Mustard seed. (F.D.C. No. 49064. S. No. 67-859 V.)

QUANTITY: 116 100-lb. bags, at Cayce, S.C., in possession of Wood Bros., Inc.

SHIPPED: 10-20-62, from Devils Lake, N. Dak.

LIBELED: 6-10-63, E. Dist. S.C.

CHARGE: 402(a)(3)—contained rodent nests and rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-26-63. Default—destruction.

29187. Sesame seed. (F.D.C. No. 49393. S. No. 2-133 X.)

QUANTITY: 17 drums, at Tampa, Fla.

SHIPPED: 7-18-63, from Palisades Park, N.J.

LIBELED: On or about 10-14-63, M. Dist. Fla.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 11-13-63. Default—destruction.

29188. Sesame seed. (F.D.C. No. 49078. S. No. 39-001 X.)

QUANTITY: 6 100-lb. bags, at Jersey City, N.J., in possession of A. Oliveri & Sons.

SHIPPED: 4-5-63, from New York, N.Y.

LIBELED: 6-21-63, Dist. N.J.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 8-9-63. Default—destruction.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE

29189. Hespernate tablets. (F.D.C. No. 48776. S. No. 65-103 V.)

QUANTITY: 118 btls. at St. Clairsville, Ohio.

SHIPPED: 8-15-62, from Long Island City, N.Y., by Nysco Laboratories.

LABEL IN PART: (Btl.) "180 Tablets Hespernate A Prenatal Dietary Supplement Manufactured For Scot Pharmacal Co., Inc. St. Clairsville, Ohio Each—Tablet Contains:—Folic Acid 0.13 MGM.—Dosage: 1 or 2 Tablets 3 Times Daily."

LIBELED: 5-14-63, S. Dist. Ohio.

CHARGE: 402(a)(2)(C)—when shipped, contained a food additive, namely, folic acid, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409.

DISPOSITION: 11-1-63. Default—destruction.

29190. Multivitamin tablets. (F.D.C. No. 49238. S. Nos. 39-113/4 V.)

QUANTITY: 388 btls. at Brooklyn, N.Y.

SHIPPED: In January 1963, from Dallas, Tex. This was a return shipment.

RESULTS OF INVESTIGATION: Examination showed that one portion of the article contained about 13 percent of declared amount of vitamin D and about 50 percent of declared amount of vitamin B₁ and that another portion of the article contained about 24 percent of declared amount of vitamin D.

LIBELED: 8-29-63, E. Dist. N.Y.

CHARGE: 402(b)(1)—while held for sale, valuable constituents, vitamins D and B₁, had been in part omitted or abstracted from the article; and 403(a)—the label statements "Each Tablet Contains: * * * Vitamin D 500 USP Units * * * Vitamin B₁ (Thiamin Mononitrate) 3 mg." were false and misleading as applied to a product containing less than the declared amounts of these vitamins.

DISPOSITION: 10-3-63. Default—destruction.

29191. Vitamin tablets. (F.D.C. No. 49083. S. No. 26-692 V.)

QUANTITY: 8 cases, 48 bottles each, at Detroit, Mich.

SHIPPED: 8-1-62, from Newark, N.J., by Lit Drug Co.

LABEL IN PART: (Btl.) "100 Tablets Arlan's Geriatric Vitamins * * * Arlan's Dept. Stores, New York, N.Y."

RESULTS OF INVESTIGATION: Examination showed that some of the tablets failed to disintegrate after 4 hours in simulated gastric fluid test solution and in simulated intestinal fluid test solution when tested by use of methods in the United States Pharmacopeia, an official compendium. Examination by human availability assay methods also confirmed such failure of the article to disintegrate.

LIBELED: 6-18-63, E. Dist. Mich.

CHARGE: 402(b)(2)—when shipped, an article which failed to disintegrate had been substituted in part for an article which would disintegrate to permit adequate assimilation of its nutrients; and 403(a)—the label, considered in its entirety, represented and suggested that the declared nutrients of the article

as normally administered are assimilable in the human body, which representations and suggestions were false and misleading since the article failed to disintegrate, so as to permit adequate assimilation of its declared nutrients.

DISPOSITION: 9-12-63. Consent—destruction.

MISCELLANEOUS FOODS

29192. Rodelle Sweet-Tone Preservative. (F.D.C. No. 47217. S. No. 20-828 T.)

QUANTITY: 27 1-gal. jars, at San Antonio, Tex.

SHIPPED: 11-3-61 and 11-4-61, from Denver, Colo. by Rodelle Laboratories, Inc.

LABEL IN PART: (Jar) "Rodelle Sweet-Tone Preservative and Flavor Improver Antiputrefactive Agent to Prevent Growth of Mold and Fermentation Contains: Water, Benzoate of Soda, Propylene Glycol, and Propyl Paraben (A Derivative of Benzoic Acid) Manufactured by Rodelle Laboratories, Incorporated, Denver, Colorado."

LIBELED: 3-12-62, W. Dist. Tex.

CHARGE: 403(a)—while held for sale, the label of the article bore false and misleading representations that the article improved the flavor of foods, and was adequate and effective as a preservative and to prevent growth of mold and fermentation generally in whipped cream goods, cream pie fillings, eclair fillings, pumpkin pie, crusts, candy centers, fondants, and butter creams.

DISPOSITION: On or about 5-23-62, Rodelle Laboratories, Inc., filed a claim to the article. On 6-22-62, the case was transferred to the United States District Court, Dist. Wyo., pursuant to stipulation of the parties. On 8-14-62, an answer to the libel was filed by the claimant. On 12-18-62, the case came on for trial before the court. On 1-11-63, the court rendered the following findings of fact and conclusions of law:

KERR, *District Judge*:

FINDINGS OF FACT

"1. This case involves the seizure of a quantity of . . . 'Rodelle Sweet-Tone Preservative and Flavor Improver' under section 304 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 334.

"2. On March 12, 1962, the United States filed a Libel of Information in the San Antonio Division of the United States District Court for the Western District of Texas, alleging that the above-named product was misbranded while held for sale after shipment in interstate commerce within the meaning of 21 U.S.C. 334(a) and 343(a) in that its labeling, namely, the jar labels, contained statements which represented and suggested that the article improved the flavor of foods and was adequate and effective as a preservative and to prevent growth of mold and fermentation, generally in whipped cream goods, cream pie fillings, eclair fillings, pumpkin pie, crusts, candy centers, fondants, butter creams, and other foods; which statements were false and misleading since they were contrary to fact.

"3. Pursuant to said Libel and process thereunder, 14 gallon jars of the product described in the Libel were seized by the United States Marshal of the above-named district on March 16, 1962.

"4. Rodelle Laboratories, Inc., on May 23, 1962, intervened and filed claim to the goods.

"5. On June 22, 1962, pursuant to stipulation between the Government and Rodelle Laboratories, Inc., the case was transferred to this Court as authorized by 21 U.S.C. 334(b).

"6. On August 14, 1962, Claimant, Rodelle Laboratories, Inc., filed Answer to the Libel and trial by this Court was held commencing December 18, 1962.

"7. The parties stipulated that, on or about November 3 or 4, 1961, the article described in the Libel was shipped from Rodelle Laboratories, Inc., 2700 Arapahoe Street, Denver, Colorado, in interstate commerce via Red Ball Motor

Freight, Inc., and Curry Motor Freight Lines, Inc., to H. T. Lawler and Son, Inc., 731-9 Perez Street, San Antonio, Texas, and that the said consignee received the said shipment.

“8. As stipulated by the parties, the shipment was made to the said consignee for sale in its ordinary course of business to customers for said products such as retailers or bakers.

“9. As stipulated between the parties, on or about January 8, 1962, Loy H. Barber, a Federal Food and Drug Inspector, visited H. T. Lawler & Son, Inc. and purchased a one-gallon jar of Rodelle Sweet-Tone from the shipment described in the Libel. The sample purchased was in every respect, a representative sample of the shipment described in the Libel.

“10. In November, 1962, Mary J. Dolan, a chemist employed by the Food and Drug Administration in its Denver District Laboratory in Denver, Colorado, analyzed a portion of the sample collected by Inspector Barber and found that the product consisted of approximately 28% benzoate of soda; 2% propyl paraben and that the remaining portions of the liquid were propylene glycol and water.

“11. The following statements, among others, appeared on the label of each of the bottles of Rodelle Sweet-Tone involved in this case:

RODELLE SWEET-TONE PRESERVATIVE AND
FLAVOR IMPROVER
ANTIPUTREFACTIVE AGENT TO PREVENT
GROWTH OF MOLD AND FERMENTATION

Following is a partial list of products
Sweet-Tone effectively and economically
protects: (number in parenthesis shows
usual number of ounces used per 100 lbs.)

Bakers' Goods

Whipped cream goods	(5 to 6)
Cream Pie Fillings	(5 to 6)
Eclair Fillings	(5 to 6)
Pumpkin Pie	(6 to 8)
Crusts	(4 to 8)

Confectioners

Candy centers, fondants, butter
creams (4 to 8) . . .

“12. The above label statements represent and suggest that the use of the article in the amounts indicated is effective, i.e. improves the flavor of the foods listed, and is effective as a preservative and to prevent growth of mold and fermentation generally in those foods.

“13. In November, 1962, Bernard F. Surkiewicz, whose expertise in the field of bacteriology was stipulated by the parties, performed several experiments on another portion of the sample collected by Inspector Barber to determine the efficacy of Sweet-Tone as a preservative in custard pie mix, pumpkin pie mix, and chicken salad. He also performed an experiment to determine whether lowering the pH would affect the preservative effect of Sweet-Tone in these products. Mr. Surkiewicz also conducted an experiment to determine the relative effectiveness of sodium benzoate and Sweet-Tone in preserving these products. In these experiments, the criteria for effective preservation was the extent of inhibition in growth of: aerobic microorganisms, and staphylococcus aureus, resulting from the addition of Sweet-Tone to the foods.

“14. These experiments showed that Sweet-Tone preservative, when used in the amounts directed on the label, was not in itself an effective preservative in the products tested. When held for periods of 24 to 48 hours at room temperature, these products, in spite of the addition of Sweet-Tone, developed a level of bacteriological growth which rendered these products a potential danger to health.

"15. Although there is some increase in the preservative effect of Sweet-Tone when utilized in products with lowered pH's, Sweet-Tone's preservative effect on products with a pH in the range covered by the products listed in the Libel is insignificant.

"16. The range of pH of the products listed in the Libel of Information in this case is between 6 and 7.

"17. Dr. Virdell E. Munsey, who is Assistant Chief, Food Research Branch, Division of Food, Food and Drug Administration, Washington, D.C., and whose expertise in the field of food chemistry was stipulated by the parties, conducted two taste tests on another portion of the sample collected by Inspector Barber. In one instance, he used a panel composed of 27 members and in another, 19 members. In these tests he used samples of whipped cream, eclair filling, custard pie filling, and pumpkin pie filling, purchased from a commercial bakery. In each of the two tests, a portion of the bakery products contained Sweet-Tone in the amounts recommended in the label, and the remaining portions of the bakery products did not contain Sweet-Tone. The results of these panel studies showed that no preference was indicated for products containing Sweet-Tone over those that did not contain Sweet-Tone.

"18. Mr. Robert M. Lucero, Vice-President of Rodelle Laboratories, Inc., admitted that the basis of the claim 'flavor improver' on the label of Sweet-Tone was merely that the use of Sweet-Tone in bakery products did not impart a bad taste to the products as did some other preservatives.

"19. Mr. William Tanner, a bacteriologist, was the only expert witness called by the claimant. He admitted that Sweet-Tone was not an effective preservative of products with a pH of 6 or higher. He testified that at a pH between 5 and 6, the article showed a moderate preservative effect and that Sweet-Tone showed a marked preservative effect at a pH of 5 and below.

CONCLUSIONS OF LAW

"1. The Rodelle Sweet-Tone involved in this case is a food within the meaning of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321(f).

"2. A food is 'held for sale' within the meaning of 21 U.S.C. 334 (a) if it is held in the ordinary course of business.

"3. At the time of seizure by the United States Marshal on March 16, 1962, the Sweet-Tone described in the Libel was held for sale after shipment in interstate commerce within the meaning of 21 U.S.C. 334(a).

"4. The Rodelle Sweet-Tone involved in this case was misbranded within the meaning of 21 U.S.C. 343(a) since its labeling was false and misleading in that the statements on the label of each of the jars of Rodelle Sweet-Tone under seizure represented and suggested that the article improved the flavor of foods listed in the Libel and was adequate and effective as a preservative and to prevent growth of mold and fermentation generally in whipped cream goods, cream pie fillings, eclair fillings, pumpkin pie, crusts, candy centers, fondants, butter creams and other foods and that these statements were false and misleading since the article will not improve the flavor of those foods and is not adequate and effective as a preservative in the foods listed above.

"5. The article is a food which is misbranded while held for sale after shipment in interstate commerce and is condemned and forfeited to the United States pursuant to 21 U.S.C. 334(a)."

On 2-28-63, the Government filed a bill of costs in the sum of \$1,095.74. On 3-5-63, the claimant filed a motion for review of the Government's costs in which the claimant resisted the Government bill of costs for the following reasons:

(1) The per diem charges of Dr. Virdell Munsey and Mr. Bernard F. Surkiewicz were for 6 days. The number of days was excessive in view of the fact that flight time between Washington, D.C., and Cheyenne, Wyo., is less than 1 day each way and the hearing required for this matter extended only 2 days. Per diem charges for each of the witnesses should have been limited to 4 days.

(2) The entire costs of Dr. Virdell Munsey were resisted and should have been dissolved for the reason that he merely testified as to a taste test which he gave panelists, such testing not being the work of a specialist and being so subjective as to be of no value.

(3) The costs of Loy Barber and Mary Dolan were resisted for the reason that the record showed that the claimant stipulated and was willing to stipulate to all things necessary to establish that the product tested by Dr. Virdell Munsey and Mr. Bernard F. Surkiewicz was the identical product which the claimant shipped in interstate commerce and was seized by a United States marshal in Texas, as a consequence of which the testimony of such persons was unnecessary to the proving the Government's case.

On 3-7-63, after the arguments of counsel were heard, the court approved the Government's bill of costs. On 2-26-63, a decree of condemnation was filed which authorized the release of the article under bond for relabeling, conditioned upon execution of the bond within 20 days. On 5-23-63, the article was destroyed, in accordance with terms of the decree.

29193. Canned watercress soup and canned cucumber soup. (F.D.C. No. 48807. S. Nos. 41-843/4 V.)

QUANTITY: 14 cases, each containing 12 13-oz. cans of watercress soup, and 15 cases, each containing 12 13-oz. cans of cucumber soup, at New York, N.Y., in possession of California Preserves, Inc.

SHIPPED: Between 6-2-62 and 12-29-62, from Lake Wales, Fla.

LABEL IN PART: (Can) "Cal Pre Brand Deluxe Watercress Princess Soup [or "Cucumber Royale Soup"] Ingredients: * * * California Preserves, Inc. New York City Distributors."

RESULTS OF INVESTIGATION: Examination showed that the articles contained undeclared artificial colors, namely, FD&C Green No. 2 and FD&C Yellow No. 5 in the watercress soup, and FD&C Green No. 2 in the cucumber soup. Investigation disclosed that these cans had been relabeled by the dealer.

LIBELED: 3-20-63, S. Dist. N.Y.

CHARGE: 402(b) (4)—while held for sale, artificial colors had been added to the articles or mixed or packed therewith so as to make them appear better or of greater value than they were; and 403(k)—the articles contained artificial coloring and they failed to bear labels stating that fact.

DISPOSITION: 4-23-63. Default—destruction.

29194. Corn husks. (F.D.C. No. 49017. S. Nos. 31-921/22 X.)

QUANTITY: 36 bales, each containing 60 lbs., at San Ysidro, Calif.

SHIPPED: 5-10-63, from Tijuana, Mexico, by Humberto Serrano.

LABEL IN PART: (Bale) "Santa Maria Brand Corn Husks * * * Prod. of Mexico Santa Maria, B.C."

LIBELED: 6-27-63, S. Dist. Calif.

CHARGE: 402(a) (3)—contained insects, insect larvae, insect fragments, insect excreta, and insect-damaged corn husks, when shipped.

DISPOSITION: 7-31-63. Default—destruction.

29195. Corn husks. (F.D.C. No. 48372. S. Nos. 63-880 V. 63-883/4 V.)

QUANTITY: 79 72-lb. bales, 176 unlabeled 50-lb. bales, and 63 cases, each containing 12 12-oz. bags, at Los Angeles, Calif.

SHIPPED: Between 1-24-63 and 2-14-63, from Tijuana, Mexico, by Serrano Bros., and from Ensenada, Mexico, by Y. Torres.

LABEL IN PART: (Bale) "Santa Maria Brand Corn Husks * * * Prod. of Mexico Santa Maria, B.C." and (case) "Mojave Brand Packed by Villmer Packing Co. Los Angeles, Calif. * * * #1 Grade Corn Husks For Tamales."

RESULTS OF INVESTIGATION: The articles in the cases had been repacked by the dealer.

LIBELED: 4-3-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects, insect larvae, insect pupae, and insect-damaged corn husks when shipped and while held for sale.

DISPOSITION: 4-25-63. Default—destruction.

29196. Egg dye. (F.D.C. No. 48825. S. No. 14-218 V.)

QUANTITY: 15,000 pkgs., at Chicago, Ill., in possession of Athenian Candle Co.

SHIPPED: 4-9-62, from Buffalo, N.Y.

LABEL IN PART: (Pkg.) "Red Coloring For Eggs Directions For Coloring * * * sold by Athenian Candle Company * * * Chicago 6, Ill." (All except dealer's name, address, and telephone number was written in the Greek language.)

RESULTS OF INVESTIGATION: The main ingredient consisting of a red dye was shipped as reported above to Chicago, Ill., where it was manufactured in final form, and delivered in bulk drums to the dealer who repackaged and labeled the article as described above.

LIBELED: 3-26-63, N. Dist. Ill.

CHARGE: 402(c)—while held for sale, the article was a color additive which was unsafe within the meaning of 706(a) since it and its intended use were not in conformity with a regulation or exemption in effect.

DISPOSITION: 4-18-63. Default—destruction.

29197. Lobster newburg dinner. (F.D.C. No. 48630. S. No. 7-535 V.)

QUANTITY: 24 cases, each containing 12 11-oz. pkgs., at Watertown, Mass.

SHIPPED: 12-4-62, from Portland, Maine, by Downeaster Div., Jacob Associates, Inc.

LABEL IN PART: (Pkg.) "Downeaster Maine Lobster Newburg Dinner Ingredients: Lobster Meat * * * Shellfish * * * Certified Color * * * Distributed by Jacob Associates, Inc., West Chester, Pa."

RESULTS OF INVESTIGATION: Examination showed the article to be a precooked plate dinner consisting of peas, potatoes, and an artificial pink-colored sauce containing pieces of shellfish. Analysis showed the shellfish was composed of lobster and approximately 11½ percent of a seafood ingredient other than lobster. Factory inspection of the manufacturer, Downeaster Div., Jacob Associates, Inc., showed that the seafood ingredients of the article were lobster and scallops.

LIBELED: 2-11-63, Dist. Mass.

CHARGE: 402(b)(2)—when shipped, scallops had been substituted in whole or in part for lobster; 402(b)(4)—scallops and artificial pink color were added to the article, or mixed or packed therewith so as to increase its bulk and make it appear better or of greater value than it was; and 403(a)—the name "Maine Lobster Newburg Dinner" and the label vignette depicting lobsters and pieces of lobster in a pink-colored sauce, were false and misleading.

DISPOSITION: 4-15-63. Default—delivered to a charitable institution.

29198. Various frozen dinners. (F.D.C. No. 48936. S. Nos. 23-133/147 V.)

QUANTITY: 162 cases, each containing from 20 to 35 individual dinners, at Englewood, Colo.

SHIPPED: 9-7-62, from Dallas, Tex., by MCDE Packing & Processing Co.

LABELS IN PART: (Case &/or bag) "Spaghetti With Meat Sauce," "Turkey 'N Gravy Over Egg Noodles," "Baked Macaroni & Cheese," "Old Fashioned Pot Roast of Beef," "Flame Seared Hamburger On A Bun," "Swiss Steak In Gravy," "Roast Turkey Dinner," "Halibut Saute With Lemon Sauce," "Snapper Saute," "Ham Rolls With Cheese Sauce," "Enchilada Dinner," "Roast Pork Dinner," "Perch Creole," "Mexican Dinner," and "Baked Meat Loaf With Gravy."

RESULTS OF INVESTIGATION: Each dinner consisted of various foods on a 3-compartment plastic plate enclosed in a cellophane bag or contained in an unlabeled plastic bag. The cases and cellophane bags were labeled with sticker-type labels stating the type of dinner within the package.

LIBELED: 5-23-63, Dist. Colo.

CHARGE: 403(e)—when shipped, the labels of the articles failed to bear (1) the name and place of business of the manufacturer, packer, or distributor, and (2) a statement of the quantity of contents.

DISPOSITION: 7-2-63. Default—destruction.

29199. Meat tenderizer. (F.D.C. No. 48848. S. No. 45-990 V.)

QUANTITY: 5 cases, each containing 12 1-qt. btls., at East St. Louis, Ill.

SHIPPED: 11-19-62, from McCook, Nebr., by Grain Products Co.

LABEL IN PART: (Btl.) "Switzer Brand Aging-Agent Instant and Liquid Has the Same Enzymatic Action on Meat * * * Switzer Wholesale Co. East St. Louis, Illinois."

RESULTS OF INVESTIGATION: Examination showed that the article was contained in a clear glass quart-size bottle bearing a wrap-around label, which label was furnished by the dealer to the shipper preprinted with the brand name and the dealer's name and address, the remaining portion of the label to be printed by the shipper. The remaining portion of the label, which was rubber-stamped, was smudged and blurred making it difficult to read the quantity of contents and ingredients statements. A portion of one paragraph was entirely obscured because it was printed over a dark, pictorial background, and part of each paragraph was obscured by the overlapping of the label.

LIBELED: 4-15-63, E. Dist. Ill.

CHARGE: 403(a)—when shipped, the label statements contained false and misleading representations that treatment with this article had the same effect as aging; 403(f)—the information required to appear on the label under 403(e) (2) and 403(i) (2), namely, an accurate statement of the quantity of contents, and the statement of ingredients, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use; and 403(i) (2)—the name on the label "Proteolytic Enzyme" was not the common or usual name of an ingredient.

DISPOSITION: 5-7-63. Default—destruction.

29200. Molding starch. (F.D.C. No. 45791. S. No. 66-768 R.)

QUANTITY: 240,160 lbs., in molding boards or trays of 10-lbs. each, at Oklahoma City, Okla.

SHIPPED: Between 1-6-61 and 2-2-61, from Chicago, Ill., by Bunte Bros. Chase Candy Co.

RESULTS OF INVESTIGATION: Examination showed that the article contained wood splinters ranging in length from 24 millimeters long by 3 millimeters wide to 4 millimeters long and less than 1 millimeter wide.

LIBELED: 5-8-61, W. Dist. Okla.

CHARGE: 402(a)(2)(A)—when shipped, the article contained wood splinters, an added deleterious substance, which was unsafe within the meaning of 406.

DISPOSITION: 5-15-61. Consent—claimed by Walter Williams Candy Co., Oklahoma City, Okla. Segregated; 23 barrels of starch destroyed.

INDEX TO NOTICES OF JUDGMENT F.N.J. NOS. 29101 TO 29200

PRODUCTS

	N.J. No.		N.J. No.
Abalone, dried	29149	Confectionery	³ 29130-29138
Apple pies, fried	29101	maize flakes	29125
turnovers	29101	Cookies	29109
Apricot concentrate, canned	29154	Corn husks	29194, 29195
Artichoke hearts, canned	29165-29167	Cornmeal	29103, 29104, 29110
Bakery products	29101, 29102	mix	29110, 29135
Beans, black-eyed, dried	29162	Cucumber soup, canned	29193
butter, canned	29160	Delson thin mints	³ 29130
garbanzo	29159	Deran thin mints	² 29131
Great Northern, dried	29104,	Dinners, various, frozen	29198
	29109, 29158	Egg(s), dye	29196
green, canned	29161	frozen	29139-29144
kidney, canned	29160, 29164	Filberts, shelled	29183
pinto, dried	¹ 29155-29158	Fish and shellfish	29145-29152
red, dried	29162	Fish fillets, frozen	29145
Black-eyed beans, dried	29162	sticks, frozen	29148
Blueberries, fresh	29153	Flour	29104, 29105-29110, 29135
Boats. See Kennebec and Sea Queen.		self-rising	29108
Breading	29126	Food additive violation	29189
Butter beans, canned	29160	French fried potatoes, frozen	29170
Candy. See Confectionery.		Frozen dinners, various	29198
Celery seed	² 29185	Fruits and vegetables	29153-29175
Cereals and cereal products	29101-29129	fruit, fresh	29153
Cheese corn	29102	miscellaneous fruit product	29154
Chickpeas. See Garbanzo beans.		tomatoes and tomato products	29172-29175
Color additive violations	29193, 29196	vegetables and vegetable products	29155-29171

¹(29155) Injunction issued.

²(29131, 29184, 29185) Seizure contested.

³(29130) Seizure contested. Contains opinions of the district court and appellate court, and findings of fact and conclusions of law.

	N.J. No.		N.J. No.
Garbanzo beans	29159	Potatoes	29168
Great Northern beans, dried	29104, 29109, 29158	french fried, frozen	29170
Hespernate tablets	29189	red	29169
Kidney beans, canned	29160, 29164	Rice	29114-29117
Lobster newburg dinner	29197	Rodelle Sweet-Tone Preserva-	
Macaroni and noodle products	29111-29113	tive	⁴ 29192
Malt barley	29127	Salt water taffy	29138
liquid, instant	29128	Sardines, canned, in tomato	
Meat tenderizer	29199	sauce	29152
Mints, thin	^{3 2} 29130, 29131	Sauce, spaghetti	29175
Mix(es), cornmeal	29110, 29135	Self-rising flour	29108
rice	29118	Sesame seed	29187, 29188
Molding starch	29200	Shellfish. <i>See</i> Fish and shellfish.	
Multivitamin tablets	29190	Shrimp, breaded, frozen	29151
Mustard seed	29186	Soybeans	29163
Noodles. <i>See</i> Macaroni and noodle products.		Spaghetti sauce	29175
Nuts	29176-29183	Spaghettini	29113
mixed, unshelled	29182	Spices, flavors, and seasoning	
Oleomargarine	² 29184	materials	29185-29188
Oysters, frozen	29150	Starch, molding	29200
Peanuts, shelled	29176	Sweetpotatoes, canned	29171
Spanish, shelled	29125	Taffy, salt water	29138
Pecan(s), ground	29178	Tomato(es), canned	29172
meal	29179	paste, canned	29174
shelled	29177	puree, canned	29173
Perch fillets, frozen	29146, 29147	Turnovers, apple	29101
Pesticide chemical violations	29168, 29169	Vegetables. <i>See</i> Fruits and vegetables.	
Pies, apple, fried	29101	Vitamin, mineral, and other products of special dietary significance	29189-29191
Pinto beans, dried	¹ 29155-29158	Walnuts, shelled	29180, 29181, 29183
Popcorn, unpopped	29110, 29129	Watercress soup, canned	29193
		Wheat	29119-29124

SHIPPERS, MANUFACTURERS, AND DISTRIBUTORS

	N.J. No.		N.J. No.
A&F Candy Manufacturing Co., Inc.:		Associated Nut Growers:	
fruit-filled candy	29137	shelled walnuts	29180
Arlan's Dept. Stores:		<i>See also</i> Nelson, P. A.	
vitamin tablets	29191	Athenian Candle Co.:	
Associated Grocers of Memphis, Inc.:		egg dye	29196
candy, flour, and cornmeal mix	29135	Azar & Solomon Co.:	
		shelled pecans	29177
		Ballard Fish & Oyster Co., Inc.:	
		frozen oysters	29150

¹(29155) Injunction issued.
² (29131, 29184, 29185) Seizure contested.
³(29130) Seizure contested. Contains opinions of the district court and appellate court, and findings of fact and conclusions of law.
⁴(29192) Seizure contested. Contains findings of fact and conclusions of law.

	N.J. No.		N.J. No.
Baron Canning Co. :		Downeaster Div., Jacob Asso-	
canned butter beans and		ciates, Inc. :	
canned kidney beans-----	29160	lobster newburg dinner-----	29197
Bean Growers Warehouse Asso-		Dupuis Canning Co., Inc. :	
ciation, Inc. :		canned sweetpotatoes-----	29171
dried pinto beans-----	29156	Eelbeck Milling Co., Inc. :	
Berry, Lee :		cornmeal -----	29103
flour, dried Great Northern		Equity Cooperative Association :	
beans, and cookies-----	29109	wheat -----	29121
Biehl & Co. :		Farmers Cooperative Elevator	
flour -----	29106	Co. :	
Blue Ridge Egg Co. :		wheat -----	29123
frozen eggs-----	29142, 29144	Farmers Elevator Co. :	
Brock Candy Co. :		wheat -----	29122
chocolate candy-----	29136	Farmers Elevator & Mercantile	
Buck, H. D. :		Co. :	
cornmeal -----	29103	wheat -----	29120
Bunte Bros. Chase Candy Co. :		Farmers Granary, Inc. :	
molding starch-----	29200	soybeans -----	29163
Bryce, F. W., Inc. :		Farmers Union Cooperative Ele-	
frozen fish fillets-----	29145	vator Co. :	
California Preserves, Inc. :		wheat -----	29119
canned watercress soup and		Farmers Union Grain Terminal	
canned cucumber soup-----	29193	Association :	
Carman, R. S. :		wheat -----	29124
candy, flour, and cornmeal mix-	29135	Federal Fish Packer :	
Chaney, Wilson, Wholesale Gro-		canned sardines in tomato	
cery Co. :		sauce -----	29152
flour, unpopped popcorn, corn-		Finley, C. E. :	
meal, and cornmeal mix-----	29110	candy -----	29132
Coburn's Supply Co. :		First National Stores, Inc. :	
red potatoes-----	29169	frozen fish sticks-----	29148
Colonial Stores, Inc. :		Fisher's Nut Co. :	
chocolate candy-----	29136	ground pecans-----	29178
Compton Nut Co. :		Friedman & Broussard :	
shelled walnuts and shelled fil-		potatoes -----	29168, 29169
berts -----	29183	Fulham Bros., Inc. :	
Cooter Co. :		frozen fish sticks-----	29148
canned butter beans and canned		Gamm, Julius, Co., Inc. :	
kidney beans-----	29160	confectionery maize flakes and	
Corbett Canning Co., Inc. :		shelled Spanish peanuts-----	29125
canned sweetpotatoes-----	29171	Glade Candy Co. :	
Corbett Sales Co. :		salt water taffy-----	29138
canned sweetpotatoes-----	29171	Graham Co., Inc. :	
Delson Candy Co. :		unshelled mixed nuts-----	29182
Delson thin mints-----	³ 29130	Grain Products Corp. :	
Deran Confectionary Co., Inc. :		instant liquid malt-----	29128
Deran thin mints-----	² 29131	meat tenderizer-----	29199

² (29131, 29184, 29185) Seizure contested.

³ (29130) Seizure contested. Contains opinions of the district court and appellate court, and findings of fact and conclusions of law.

	N.J. No.		N.J. No.
Grand Prairie Wholesale Grocery Co., Inc.:		Mercer's, Inc.:	
flour, dried Great Northern		apple turnovers and fried ap-	
beans, and cookies-----	29109	ple pies-----	29101
Hammond, R. H., Sr.:		Mixies, Inc.:	
dried red beans and dried		flour -----	29105
black-eyed beans-----	29162	Morton House Kitchens, Inc.:	
Hammond Milling Co.:		canned kidney beans-----	29164
dried red beans and dried		Natchez Pecan Shelling Co.:	
black-eyed beans-----	29162	ground pecans-----	29178
Hardin's Bakeries:		Nelson, P. A.:	
apple turnovers and fried ap-		shelled walnuts-----	29181
ple pies-----	29101	New England Fillet Co., Inc.:	
Heins & Lesemann, Inc.:		frozen perch fillets-----	29146
rice -----	29116	New England Popcorn Co.:	
Hoffman, J. C.:		cheese corn-----	29102
candy -----	29133	Nugget Distributors:	
Hoffman Candy Co., Inc.:		canned butter beans and	
candy -----	29133	canned kidney beans-----	29160
Hollis Grain Co.:		Nysco Laboratories:	
frozen eggs-----	29142	Hespernate tablets-----	29189
Howard, G. F.:		Oliveri, A., & Sons:	
canned butter beans and		sesame seed-----	29188
canned kidney beans-----	29160	Oregon Egg & Poultry Co.:	
Hurst Foods, Inc.:		frozen eggs -----	29143
frozen eggs-----	29141	Osborn, M. M.:	
Imperial Candy Co., Inc.:		dried pinto beans-----	29157
candy -----	29132	Osborn Bean & Elevator Co.:	
Jacob Associates, Inc. See		dried pinto beans-----	29157
Downeaster Div.		Parsons, Inc.:	
Jiffy Fry, Inc.:		self-rising flour-----	29108
frozen french fried potatoes--	29170	Pearce-Young-Angel, Inc.:	
Kennebec (boat):		rice -----	29117
frozen perch fillets-----	29147	Perry, J. C., Co.:	
Lake Rice Mill, Inc.:		egg noodles-----	29112
rice -----	29114	Peterson Packing Corp.:	
La Victoria Foods, Inc.:		frozen eggs-----	29140
canned tomatoes-----	29172	Prather, F. H.:	
Leavitt, John W., Co., Inc.:		cornmeal, dried Great North-	
shelled peanuts-----	29176	ern Beans, and flour-----	29104
Lever Bros.:		Puryear Grocery Co.:	
oleomargarine ----- ²	29184	dried Great Northern beans	
Lit Drug Co.:		and dried pinto beans-----	29158
vitamin tablets-----	29191	Quality Egg Co., Inc.:	
MCDE Packing & Processing		frozen eggs-----	29139
Co.:		Ravarino & Freschi, Inc.:	
various frozen dinners-----	29198	spaghettini -----	29113
Mercer Baking Co., Inc.:		Rex Potato Chip Co.:	
apple turnovers and fried ap-		cheese corn-----	29102
ple pies-----	29101	Roadway Express, Inc.:	
		rice mixes-----	29118

² (29131, 29184, 29185) Seizure contested.

	N.J. No.		N.J. No.
Rodelle Laboratories, Inc.:		Stedman Co.:	
Rodelle Sweet-Tone Preserva-		rice -----	29114
tive ----- ⁴	29192	Steele Canning Co.:	
Rudin, I., & Co.:		canned butter beans and	
macaroni and noodle prod-		canned kidney beans-----	29160
ucts -----	29111	Sunshine Pecan Co.:	
Santa Clara Nut Co.:		pecan meal-----	29179
canned apricot concentrate---	29154	Switzer Wholesale Co.:	
Schoneberger & Sons:		meat tenderizer-----	29199
egg noodles-----	29112	Tillman, A. J.:	
Scot Pharmacal Co., Inc.:		dried pinto beans----- ¹	29155
Hespernate tablets-----	29189	Tillman & Son Co. See Tillman,	
Sea Queen (boat):		A. J.	
frozen perch fillets-----	29146	Torres, Y.:	
Searles, W. J.:		corn husks-----	29195
fresh blueberries-----	29153	Van Camp Sea Food Co.:	
Serrano, Humberto:		canned sardines in tomato	
corn husks-----	29194	sauce -----	29152
Serrano Bros.:		Venable, Ignace:	
corn husks-----	29195	potatoes -----	29168
Shenandoah Candies, Inc.:		Villmer Packing Co.:	
candy -----	29134	corn husks-----	29195
Shriver Nut Co.:		Wetterau Grocer Co.:	
shelled walnuts and shelled		cornmeal, dried Great North-	
filberts -----	29183	ern beans, and flour-----	29104
Singleton Packing Corp.:		Wilson, Frank M., Co.:	
frozen breaded shrimp-----	29151	canned butter beans and	
Star Coffee Co.:		canned kidney beans-----	29160
celery seed----- ²	29185	Winn-Dixie Stores, Inc.:	
Star Terminal & Warehouse:		flour -----	29107
unpopped popcorn-----	29129	Wood Bros., Inc.:	
		mustard seed-----	29186

¹(29155) Injunction issued.²(29131, 29184, 29185) Seizure contested.⁴(29192) Seizure contested. Contains findings of fact and conclusions of law.

U.S. Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

29201-29300

FOODS

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were alleged to be adulterated or misbranded within the meaning of the Act, when introduced into and while in interstate commerce, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default or consent, including, in one case, a bond forfeiture proceeding, and in which, in two cases, libels were dismissed after destruction of the articles; (2) criminal proceedings which were terminated upon pleas of guilty and nolo contendere; and (3) injunction proceedings in which decrees of permanent injunction were entered. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal and injunction proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., June 24, 1964.

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SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN ALLEGED VIOLATIONS REPORTED IN F.N.J. NOS. 29201-29300

Adulteration, Section 402(a) (1), the article contained a poisonous or deleterious substance which might render it injurious to health; Section 402(a) (2)(A), the article contained an added poisonous or added deleterious substance, which was unsafe within the meaning of Section 406; Section 402(a) (2) (B), the article was a raw agricultural commodity and contained a pesticide chemical which was unsafe within the meaning of Section 408(a) ; Section 402(a) (2) (C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a) (4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b) (1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b) (2), a substance had been substituted in whole or in part for the article; Section 402(b) (4), a substance had been added to the article or mixed or packed therewith so as to increase its bulk or weight; Section 406, a poisonous or deleterious substance was unsafe since such substance was not required in the production of food and could have been avoided by good manufacturing practice; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because no tolerance or exemption from the requirement of a tolerance for such pesticide chemical in or on the raw agricultural commodity had been prescribed by the Secretary of Health, Education, and Welfare, or because the quantity of the pesticide chemical in or on the raw agricultural commodity was not within the limits of a tolerance prescribed by the Secretary of Health, Education, and Welfare; and Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use.

Misbranding, Section 403(a), the labeling of the article was false and misleading; Section 403(e), the article was in package form, and it failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g) the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed by regulations and (1) it failed to conform to such definition and standard and (2) its label failed to bear the name of the food specified in the definition and standard; and as required by regulations, the common names of certain optional ingredients present in such food; Section 403(h) (1), the article purported to be or was represented as a food for which a standard of quality had been prescribed by regulations, and its quality fell below such standard;

Section 403(i) (2), the article was not subject to the provisions of Section 403(g) and the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; and Section 403(j), the article purported to be and was represented for special dietary uses, and its label failed to bear such information concerning its vitamin, mineral, and other dietary properties as the Secretary had determined to be, and by regulation prescribed as, necessary in order fully to inform purchasers as to its value for such uses.

BEVERAGES AND BEVERAGE MATERIALS

29201. Green coffee beans. (F.D.C. No. 49091. S. No. 97-057 V.)

QUANTITY: 383 132-lb. bags at Brooklyn, N.Y.

SHIPPED: Imported on 3-13-63, from Africa, by C. A. Mackey & Co., Inc.

LABEL IN PART: (Bag) "Product of Angola Angola Robusta Cafe * * * Soci-
cafe."

LIBELED: 7-1-63, E. Dist. N.Y.

CHARGE: 402(a) (3)—contained insect-damaged coffee beans when shipped.

DISPOSITION: 8-22-63. Consent—claimed by Ph. Wechsler & Son, Inc., New York, N.Y., for export.

29202. Fire-damaged liquor. (F.D.C. No. 49076. S. No. 43-620 V.)

QUANTITY: 854 btls. at Wilmington, Del.

SHIPPED: On unknown dates, from outside the State of Delaware.

RESULTS OF INVESTIGATION: The goods were involved in a fire on 8-19-62, at Wilmington, Del. Examination showed that the bottles were covered with miscellaneous dirt which in some instances had penetrated under the caps, some of which were made of plastic and some of metal. The plastic caps were warped from the heat and the metal caps were rusted and pitted. Many of the bottle seals and labels were charred and illegible, having been subjected to heat from the fire and water used to fight the fire.

LIBELED: 6-14-63, Dist. Del.

CHARGE: 402(a) (4)—held under insanitary conditions.

DISPOSITION: 10-11-63. Default—destruction.

29203. Iced tea mix. (F.D.C. No. 49310. S. No. 9-139 X.)

QUANTITY: 543 cases, each containing 48 1½-oz. pkgs., at Little Falls, N.Y.

SHIPPED: 8-3-63, from Oberlin, Ohio, by Muller Packaging, Inc.

LABEL IN PART: (Pkg.) "Salada * * * Iced Tea Mix With Lemon And Sugar Added * * * Salada Foods, Inc. Woburn, Mass. * * * Ingredients: Sugar, Imitation Lemon Juice Powder, Instant Tea."

LIBELED: 9-13-63, N. Dist. N.Y.

CHARGE: 403(a)—when shipped, the label vignette depicting fresh lemons, and the label statement "With lemon * * * added" represented and suggested that the dehydrated lemon ingredient in the article was lemon juice powder, which representations and statements were false and misleading since the dehydrated lemon ingredient was in fact imitation lemon juice powder.

DISPOSITION: 10-19-63. Default—delivered to Government institutions.

CEREALS AND CEREAL PRODUCTS

BAKERY PRODUCTS

29204. Cookies. (F.D.C. No. 49085. S. No. 19-661 X.)

QUANTITY: 48 cases, each containing 12 bags, at Fort Worth, Tex.

SHIPPED: 5-27-63, from St. Louis, Mo., by Alison's Cookie Co.

LABEL IN PART: (Bag) "Mrs. Alison's Jelly Tops * * * Ingredients: * * *

Net Weight: 11½-Oz. Mrs. Alison's Cookie Co. St. Louis, Mo."

RESULTS OF INVESTIGATION: Examination showed that the article was short weight.

LIBELED: 7-5-63, N. Dist. Tex.

CHARGE: 403(e)(2)—the article failed to bear a label containing an accurate statement of the quantity of contents when shipped.

DISPOSITION: 8-30-63. Default—delivered to a Federal institution for its use.

29205. Crackers, Melba toast and rye bread. (F.D.C. No. 49377. S. Nos. 49-784 X, 49-790 X, 49-794/5 X.)

QUANTITY: 48 cases, each containing 24 3¼-oz. pkgs. of Melba toast, 112 9-lb. cases of water crackers, 5 cases, each containing 12 6-oz. pkgs. of canape crackers, and 192 cases, each containing 24 9-oz. pkgs. of rye bread, at San Francisco, Calif., in possession of Juillard Fancy Foods Co.

SHIPPED: Between 5-29-61 and 11-23-62, from West New York, N.J.; Milton, Mass.; Copenhagen, Denmark; and Turku, Finland.

LIBELED: 10-2-63, N. Dist. Calif.

CHARGE: 402(a)(3)—contained insects, and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-8-64. Default—destruction.

29206. Frozen bread dough. (F.D.C. No. 49252. S. No. 31-248 X.)

QUANTITY: 128 cases, each containing 36 1-lb. loaves, at Phoenix, Ariz.

SHIPPED: 7-7-63, from Anaheim, Calif., by Bridgford Distributing Co.

LABEL IN PART: (Bag) "Bridgford Ready To Bake Bread Dough * * * Raisin-Honey * * * A Product of Bridgford Foods Corporation Anaheim, Calif."

LIBELED: 9-9-63, Dist. Ariz.

CHARGE: 402(a)(3)—contained grease, floor debris, and other nondescript foreign material; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 10-31-63. Default—destruction.

29207. Frozen bread dough. (F.D.C. No. 49335. S. Nos. 51-988/89 X.)

QUANTITY: 43 cases, each containing 12 pkgs., at Portland, Oreg.

SHIPPED: 6-23-63, from Anaheim, Calif., by Bridgford Distributing Co.

LABEL IN PART: (Pkg.) "Bridgford Ready To Bake Bread Dough * * * 3 1-pound Loaves Honey Wheat * * * A Product of Bridgford Foods Corporation Anaheim, Calif."

LIBELED: 9-13-63, Dist. Oreg.

CHARGE: 402(a)(3)—contained grease, floor debris and other nondescript foreign matter; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 11-18-63. Default—destruction.

29208. Frozen bread dough. (F.D.C. No. 49297. S. Nos. 22-745/7 X.)

QUANTITY: 444 cases, each containing 12 3-lb. pkgs., at Salt Lake City, Utah.

SHIPPED: 6-24-63, from Anaheim, Calif., by Bridgford Distributing Co.

LABEL IN PART: (Case) "Bridgford Ready-To-Bake Frozen Bread Dough * * * Bridgford Foods Corporation, Anaheim, Calif."; and (pkgs.) "Bridgford Ready-To-Bake Bread Dough * * * a product of Bridgford Foods Corporation, Anaheim, Calif."

LIBELED: 9-13-63, Dist. Utah.

CHARGE: 402(a)(3)—contained grease, floor debris, and other nondescript foreign material; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 12-23-63. Default—delivered to a public institution for use as animal feed.

FLOUR*

29209. Flour. (F.D.C. No. 49022. S. No. 47-604 X.)

QUANTITY: 1,000 80-lb. bags of flour, at Memphis, Tenn.

SHIPPED: Prior to 5-24-63, from Beardstown, Ill.

RESULTS OF INVESTIGATION: The rail car in which the article was transported was damaged requiring the removal and repacking of the flour in transit.

LIBELED: 6-28-63, W. Dist. Tenn.

CHARGE: 402(a)(3)—contained insects and bird excreta while held for sale.

DISPOSITION: 7-3-63. Consent—claimed by McCallum & Robinson, Inc., of Memphis, Tenn., and denatured for use in the manufacture of glue.

29210. Flour. (F.D.C. No. 48552. S. Nos. 61-589 T, 61-591/2 T.)

INFORMATION FILED: 9-25-63, W. Dist. Tenn., against Clayton-Brown Co., a corporation, Memphis, Tenn., and Percy A. Clayton, Jr., executive vice president.

ALLEGED VIOLATIONS: Between 6-26-62 and 8-24-62, while quantities of flour were being held for sale after shipment in interstate commerce, the defendants caused such flour to be held in a building accessible to insects and rodents and to be exposed to contamination by insects and rodents, which acts resulted in the flour being adulterated.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-31-63. \$1,000 fine against the defendants jointly.

29211. Flour and marshmallows. (F.D.C. No. 49324. S. Nos. 21-634/5 X.)

QUANTITY: 209 bales, each containing 5 10-lb. bags of flour, and 186 cases, each containing 24 10½-oz. bags of marshmallows, at Denver, Colo., in possession of Associated Grocers of Colorado, Inc.

*See also No. 29245.

SHIPPED: Between 5-13-63 and 5-29-63, from Kansas City, Mo., and Elk Grove and Chicago, Ill.

LIBELED: 9-24-63, Dist. Colo.

CHARGE: 402(a)(3)—the flour contained bird excreta and the marshmallows contained rodent excreta and rodent-gnawed marshmallows; and 402(a)(4)—both articles held under insanitary conditions.

DISPOSITION: 10-30-63. Consent—claimed by Associated Grocers of Colorado, Inc. Segregated; 23 bags of flour and 3 bags of marshmallows destroyed.

29212. Flour. (F.D.C. No. 49138. S. No. 7-175 V.)

INFORMATION FILED: 9-25-63, Dist. Conn., against Adolph Staskevicius, t/a Brooklyn Baking Co., Waterbury, Conn.

ALLEGED VIOLATIONS: Between 10-26-62 and 11-9-62, while a number of bags of flour were being held for sale after shipment in interstate commerce, the defendant caused such flour to be held in a building accessible to insects and to be exposed to contamination by insects by placing the flour in an insect-contaminated flour conveying system, which acts resulted in the flour being adulterated.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 10-7-63. \$150 fine.

29213. Flour. (F.D.C. No. 48543. S. Nos. 61-597 T, 61-599/600 T, 84-561/5 T, 84-568/74 T.)

INFORMATION FILED: 10-8-63, W. Dist. Tenn., against Caradine Co., a corporation, Memphis, Tenn., and Robert S. Caradine, president.

ALLEGED VIOLATIONS: Between 6-20-62 and 9-12-62, while quantities of flour were being held for sale after shipment in interstate commerce, the defendants caused such flour to be held in a building accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the flour being adulterated.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-24-63. \$1,000 fine against defendants jointly.

29214. Self-rising flour. (F.D.C. No. 48871. S. Nos. 3-217/8 V.)

INFORMATION FILED: 8-20-63, W. Dist. Va., against Abingdon Grocery Co., Inc., Abingdon, Va.

ALLEGED VIOLATIONS: Between 9-19-62 and 11-6-62, while a number of bags of flour were being held for sale after shipment in interstate commerce, the defendant caused such flour to be held in a building accessible to rodents and birds, and to be exposed to contamination by rodents and birds, which acts resulted in the flour being adulterated.

CHARGE: 402(a)(3)—a portion of the article contained rodent hairs and rodent excreta; and 402(a)(4)—all lots of the article were held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 10-8-63. \$600 fine.

29215. Pastry flour. (F.D.C. No. 47121. S. Nos. 12-793 R, 20-090 R, 13-501 T, 25-223 T, 25-508 V.)

INFORMATION FILED: 4-26-63, E. Dist. Mich., against Addison Flouring Mill Co., a partnership, Addison, Mich.

SHIPPED: Between 12-1-60 and 11-15-62, from Michigan to Ohio and Illinois.

LABEL IN PART: (Bag) "25 Lbs. Bleached * * * Bartley's Pastry Flour * * * Distributed by The Bartley Co. * * * Toledo, Ohio; 100 Lbs. * * * Peacemaker Flour * * * Addison Flouring Mill Co., Addison, Michigan."

CHARGE: 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 12-5-63. \$500 fine.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

29216. Wheat. (Inj. No. 403.)

COMPLAINT FOR INJUNCTION FILED: 5-12-61, Dist. S. Dak., against Emil Perman Elevator, a partnership, Greenway, S. Dak., and Edward Odenbach, manager.

CHARGE: The complaint for injunction alleged that the defendants were engaged in the operation, at Greenway, S. Dak., of a grain storage facility consisting of two elevators, each of a wooden crib construction and a steel quonset storage building, for the storage and distribution of wheat for human consumption, and were shipping in interstate commerce wheat which was adulterated within the meaning of 402(a)(3) and 402(a)(4) in that the wheat consisted in part of a filthy substance by reason of the presence of rodent excreta and rodent urine in it, and was being held at the defendants' grain storage facility at Greenway, S. Dak., under insanitary conditions whereby it might have become contaminated with filth.

The complaint alleged further that the insanitary conditions of the defendants' grain storage facility at Greenway, S. Dak., resulted from and consisted of the presence in the elevator designated as No. 2 House of the following: bird feathers and approximately 50 rodent pellets in the southwest corner of the headhouse; bird excreta under the north window of the headhouse and less than 6 inches from a spout leading into a storage bin; approximately 200 rodent pellets along the walls of the southeast corner of the headhouse; approximately 150 rodent pellets on the floor at bin-top level and at the edge of an opening leading directly into bin No. 2; residues of spilled grain beneath the elevator which all appeared to have been leveled by animal traffic; trails caused by rodent activity on the surface of the wheat in every bin; hundreds of rodent pellets on the surface of the wheat in every bin; approximately 100 mouse pellets scattered over the entire floor at bin-top level; and the presence in samples of surface wheat from the bins of rodent urine and of rodent pellets ranging in number from 33 to 370 pellets.

The complaint alleged further that the defendants were well aware that their activities were in violation of the Act; that inspections of the defendants' grain storage facility at Greenway, S. Dak., were made on 2-19-59, 5-7-59,

*See also No. 29236.

and 3-8/9-61, by inspectors of the Food and Drug Administration; that at each inspection evidence of rodent activity was readily visible in the part of the grain storage facility designated No. 2 House; that the defendants had been aware from the first inspection that wheat for human consumption was being stored under insanitary conditions in their grain storage facility; and that despite the warning conveyed to the defendants by the inspections, the defendants had failed to correct the insanitary conditions at the grain storage facility and continued to ship into interstate commerce, wheat which was adulterated as specified above.

DISPOSITION: On 5-12-61, a temporary restraining order was issued by the court and on 5-29-61, a consent decree of permanent injunction was filed which enjoined the defendants from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce in violation of the Act, wheat for human consumption and any similar article of food which was adulterated within the meaning of 402(a)(3) in that it consisted in part of a filthy substance, and within the meaning of 402(a)(4) in that it had been held under insanitary conditions whereby it may have become contaminated with filth; and directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce in violation of the Act, wheat for human consumption and any similar article of food held at defendants' grain elevator designated as No. 2 House, at Greenway, S. Dak.; and all of such prohibition remaining in full force and effect until

(a) the elevator was thoroughly cleaned and renovated and rendered suitable for use in connection with the storage of wheat for human consumption and any similar article of food, namely, until all rodent and bird filth was removed from the elevator and the equipment used in storing such food was cleaned; all rodent and bird infestation in and about the elevator was eliminated; the means of ingress and egress of the elevator by rodents and birds were closed; and any similar insanitary conditions which might result in the contamination of wheat for human consumption or any similar article of food while held at the elevator were eliminated;

(b) all of the wheat which was on hand at the elevator at the time the elevator was cleaned, renovated and rendered suitable for the storage of food for human consumption was destroyed, denatured for use as animal feed, or cleaned and otherwise reconditioned under the supervision of a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare; and

(c) an inspection was made of the elevator by a duly authorized representative of the Food and Drug Administration, Department of Health, Education, and Welfare, and a report made to the court which showed that the above-described, or any similar insanitary conditions, no longer existed, and that the foods for human consumption described in subparagraph (b) above had been destroyed, denatured, or brought into compliance with the law as provided in subparagraph (b) above.

On 7-13-62, an inspection was made in accordance with the terms of the injunction. On 8-14-62, pursuant to stipulation between the parties, it being made to appear that the defendants had complied with all of the terms of the consent decree of permanent injunction and had paid all costs, the court ordered the dissolution of the consent decree of permanent injunction.

29217. Wheat. (F.D.C. No. 48742. S. No. 57-841 V.)

QUANTITY: 120,000 lbs. at Minneapolis, Minn.

SHIPPED: 3-21-63, from Miranda, S. Dak., by Farmers Elevator Co.

LIBELED: 4-8-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 5-16-63. Consent—claimed by Farmers Elevator Co., of Miranda, S. Dak., and denatured.

29218. Wheat. (F.D.C. No. 48755. S. No. 77-254 V.)

QUANTITY: 121,800 lbs. at Kansas City, Kans.

SHIPPED: 4-12-63, from Walsh, Colo., by Vilas Grain Co.

LIBELED: 4-25-63, Dist. Kans.

CHARGE: 402(a) (3)—contained insect-damaged wheat when shipped.

DISPOSITION: 6-4-63. Consent—claimed by Davis-Hunt Grain Co., of Kansas City, Mo. Reconditioned; 28,310 lbs. destroyed.

29219. Wheat. (F.D.C. No. 49584. S. No. 49-226 X.)

QUANTITY: 120,000 lbs. in a rail car, at Vallejo, Calif.

SHIPPED: 12-19-63, from Ogden, Utah.

RESULTS OF INVESTIGATION: Investigation showed that the rail car was inhabited by live mice.

LIBELED: 1-6-64, N. Dist. Calif.

CHARGE: 402(a) (4)—when in transit and while held for sale, contained rodent excreta pellets; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 2-24-64. Consent—claimed by Southern Pacific Co., of San Francisco, Calif., and denatured.

29220. Wheat. (F.D.C. No. 49029. S. No. 34-694 X.)

QUANTITY: 118,800 lbs. at Duluth, Minn.

SHIPPED: 6-12-63, from Alexander, N. Dak., by Farmers Grain & Oil Co.

LIBELED: 7-8-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-11-63. Consent—claimed by Farmers Grain & Oil Co., and decharacterized.

29221. Wheat. (F.D.C. No. 49031. S. No. 35-991 X.)

QUANTITY: 123,600 lbs. at Wabasha, Minn.

SHIPPED: 6-20-63, from Holmquist, S. Dak., by Farmers Elevator Co.

LIBELED: 7-5-63, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-12-63. Consent—claimed by Holmquist Farmers Elevator Co., and denatured.

29222. Wheat. (F.D.C. No. 49026. S. No. 34-693 X.)

QUANTITY: 125,000 lbs. at Superior, Wis.

SHIPPED: 6-20-63, from Kensal, N. Dak., by Kensal Farmers Elevator Co.

LIBELED: 7-5-63, W. Dist. Wis.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-12-63. Consent—claimed by Kensal Farmers Elevator Co., and decharacterized.

29223. Wheat. (F.D.C. No. 49020. S. No. 34-404 X.)

QUANTITY: 40,080 lbs. at Minneapolis, Minn.

SHIPPED: 6-20-63, from Ipswich, S. Dak., by Farmers Equity Elevator Co.

LIBELED: 6-26-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-17-63. Consent—claimed by Farmers Equity Elevator Co., and denatured.

29224. Wheat. (F.D.C. No. 49040. S. No. 34-943 X.)

QUANTITY: 104,660 lbs. at Superior, Wis.

SHIPPED: 6-14-63, from Lockhart, Minn., by Farmers Union Grain Terminal Association.

LIBELED: 7-11-63, W. Dist. Wis.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-13-63. Consent—claimed by Farmers Union Grain Terminal Association and denatured.

29225. Wheat. (F.D.C. No. 49269. S. No. 34-442 X.)

QUANTITY: 114,000 lbs. at Minneapolis, Minn.

SHIPPED: 7-22-63, from Leola, S. Dak., by Independent Elevator Co., Inc.

LIBELED: 8-12-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-26-63. Consent—claimed by Independent Elevator Co., Inc., and denatured.

29226. Wheat. (F.D.C. No. 49274. S. No. 33-955 X.)

QUANTITY: 90,900 lbs. at Minneapolis, Minn.

SHIPPED: 7-19-63, from Ellendale, N. Dak., by Ellendale Farmers Union Co-op Association.

LIBELED: 8-12-63, Dist. Minn.

CHARGE: 402(a)(2)(B)—when shipped, the article was a raw agricultural commodity and it contained a pesticide chemical, namely, a mercurial compound, which was unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on wheat had been prescribed by regulations.

DISPOSITION: 8-26-63. Consent—claimed by Ellendale Farmers Union Co-op Association. Reconditioned; 13,340 lbs. destroyed.

29227. Wheat. (F.D.C. No. 49273. S. No. 35-078 X.)

QUANTITY: 118,800 lbs. at Minneapolis, Minn.

SHIPPED: 7-31-63, from Superior, Wis., by Farmers Union Grain Association.

LIBELED: 8-12-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 9-3-63. Consent—claimed by Fairdale Farmers Cooperative Elevator Co., Fairdale, N. Dak., and denatured.

29228. Wheat. (F.D.C. No. 49276. S. No. 33-958 X.)

QUANTITY: 109,200 lbs. at Minneapolis, Minn.

SHIPPED: 7-22-63, from Mott, N. Dak., by Mott Equity Exchange.

LIBELED: 8-14-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent pellets when shipped.

DISPOSITION: 9-3-63. Consent—claimed by Mott Equity Exchange and denatured.

29229. Wheat. (F.D.C. No. 49272. S. No. 34-213 X.)

QUANTITY: 82,800 lbs. at Superior, Wis.

SHIPPED: 7-31-63, from Minto, N. Dak., by Minto Farmers Elevator Co.

LIBELED: On or about 8-14-63, W. Dist. Wis.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 9-9-63. Consent—claimed by Minto Farmers Elevator Co. and denatured.

29230. Wheat. (F.D.C. No. 49299. S. No. 51-239 X.)

QUANTITY: 120,010 lbs. at Spokane, Wash.

SHIPPED: 8-20-63, from Wilsall, Mont., by Teslow, Inc.

LIBELED: 9-3-63. E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 9-13-63. Consent—claimed by Atwood Larson Co., Portland, Oreg., and denatured.

29231. Wheat. (F.D.C. No. 49295. S. No. 33-173 X.)

QUANTITY: 27,400 lbs. at Minneapolis, Minn.

SHIPPED: 8-7-63, from Munster, N. Dak., by Munster Equity Elevator.

RESULTS OF INVESTIGATION: Examination showed that the wheat contained insect parts and approximately 39 percent dockage consisting of straw, chaff, grain hulls, buckwheat and mustard seeds, and broken wheat kernels.

LIBELED: 9-5-63, Dist. Minn.

CHARGE: 402(a)(3)—when shipped, the article contained insect parts; 402(b)(2)—dockage had been substituted in whole or in part for wheat; and 402(b)(4)—dockage had been added to or mixed or packed with the article so as to increase its bulk or weight.

DISPOSITION: 9-27-63. Consent—claimed by Munster Equity Elevator; reconditioned and segregated—1,640 lbs. of dockage removed.

29232. Hominy grits and rice. (F.D.C. No. 48579. S. Nos. 2-096 T, 87-904 T, 187 V.)

INFORMATION FILED: 6-7-63. S. Dist. Ga., against Belford Co., a partnership, Savannah, Ga., and Richard A. Belford, partner.

ALLEGED VIOLATIONS: Between 10-21-61 and 11-28-62, while quantities of hominy grits and rice were being held for sale after shipment in interstate com-

merce, the defendants caused the articles to be held in a building that was accessible to rodents and insects, and caused the article to be exposed to contamination by rodents and insects, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—the rice and one lot of hominy grits contained rodent urine, one lot of hominy grits contained insects and insect larvae; and 402(a)(4)—all lots were held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 7-30-63. Partnership—\$100 fine; individual—\$100 fine, and probation for 2 years.

29233. Hominy grits. (F.D.C. No. 48885. S. No. 14 V.)

INFORMATION FILED: 7-17-63, W. Dist. S.C., against Amos W. Julian, manager of a wholesale grocery warehouse, Seneca, S.C.

ALLEGED VIOLATIONS: Between 5-4-62 and 11-2-62, the defendant caused quantities of enriched white hominy grits, while held for sale after shipment in interstate commerce, to be held in a building which was accessible to rodents, and to be exposed to contamination by rodents which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 11-20-63. \$500 fine.

29234. Rice and evaporated milk. (F.D.C. No. 48170. S. Nos. 42-836 T, 43-407 T, 43-458/9 T, 44-108 T.)

INFORMATION FILED: 3-5-63, E. Dist. Pa., against Solomon Sved, t/a Sol Sved, Philadelphia, Pa.

ALLEGED VIOLATIONS: Between 10-30-61 and 12-20-61, while a number of bags of rice were being held for sale after shipment in interstate commerce, the defendant caused such rice to be held in a building accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the rice being adulterated.

In addition, the defendant caused a quantity of adulterated rice to be shipped from Pennsylvania to New Jersey on 12-19-61, and a quantity of adulterated evaporated milk to be shipped from Delaware to Pennsylvania on 3-20-62.

CHARGE: 402(a)(3)—a portion of the rice contained rodent excreta and rodent urine and the evaporated milk contained a decomposed substance; and 402(a)(4)—all lots of the rice had been held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 12-18-63. Imprisonment for 3 months suspended, \$3,000 fine, and probation for 3 years.

29235. Cornmeal mush and cheese. (F.D.C. No. 49387. S. Nos. 27-560 X, 27-563/4 X.)

QUANTITY: 112 cases, each containing 10 1-lb. 14-oz. pkgs. of cornmeal mush, 10 boxes each containing 4 13-lb. pkgs. of cheddar cheese, and 10 boxes, each containing 4 13-lb. pkgs. of colby cheese, at Norfolk, Nebr.

SHIPPED: On 2-20-63, 2-25-63, and other unknown dates, from Missouri and Wisconsin.

LIBELED: 10-10-63, Dist. Nebr.

CHARGE: 402(a)(3)—the cornmeal mush contained insect larvae, and all the articles contained mold while held for sale.

DISPOSITION: 12-4-63. Default—destruction.

CHOCOLATE, CONFECTIONERY, AND RELATED PRODUCTS

CHOCOLATE PRODUCT

29236. Cocoa, cornmeal and corn puffs. (F.D.C. No. 48872. S. Nos. 20-781 T, 70-942 T, 70-945 T, 20-164 X.)

INFORMATION FILED: 8-30-63, N. Dist. Tex., against Schepps Grocer Supply, Inc., Dallas, Tex., and Abraham G. Schepps.

ALLEGED VIOLATIONS: Between 7-5-62 and 8-28-62, while quantities of cocoa, cornmeal and corn puffs were held for sale after shipment in interstate commerce, Abraham Schepps, at that time an individual trading as Schepps Grocer Supply, caused the cocoa to be exposed to contamination by DDT and the cornmeal and corn puffs to be held in a building accessible to rodents and insects and to be exposed to contamination by insects, which acts resulted in such articles being adulterated.

In addition, between 6-13-63 and 7-15-63, while a quantity of cornmeal was being held for sale after shipment in interstate commerce, Schepps Grocer Supply, Inc., and Abraham Schepps, at that time president of the corporation, caused such cornmeal to be held in a building accessible to insects and rodents and to be exposed to contamination by insects and rodents, which acts resulted in the cornmeal being adulterated.

CHARGE: 402(a)(3)—a portion of the cornmeal contained rodent urine and the corn puffs contained insects; and 402(a)(4)—the cocoa was held under insanitary conditions whereby it may have been rendered injurious to health and the other articles were held under insanitary conditions whereby they may have become contaminated with filth.

PLEA: Nolo contendere.

DISPOSITION: 10-22-63. Corporation fined \$500; individual fined \$150.

CONFECTIONERY*

29237. Tootsie Rolls (candy). (Inj. No. 412.)

COMPLAINT FOR INJUNCTION FILED: 8-8-61, Dist. N.J., against Sweets Company of America, a corporation, and Joseph T. Hand, treasurer.

CHARGE: The complaint alleged that the defendants operated at Hoboken, N.J., a plant which manufactured 4 kinds of candy under the brand name prefix "Tootsie" one of which was designated "Tootsie Rolls" and that the "Tootsie Rolls" were made in various size packages, among which was a "Multi-Pak," labeled as containing 9 ounces, which contained 6 individually wrapped pieces of candy. It was alleged further that prior to 1-1-61, each of the individually wrapped pieces of candy in the "Multi-Pak" carton were labeled as containing 1½ ounces; that on or about 1-1-61, the company cut the weight of each piece by ⅛ of an ounce namely to 1⅜ ounces; that the "Multi-Pak" carton remained

*See also No. 29211.

labeled as containing 9 ounces rather than $8\frac{1}{4}$ ounces; that new wrappers on the individually wrapped pieces of candy were not put in use until May 1961; and that the "Multi-Pak" carton showing 9 ounces as the net weight of the contents of the package was still being used at the time of the filing of the complaint.

The complaint alleged also that the defendants were aware that their activities were in violation of the Act; that they had informed inspectors of the Food and Drug Administration that it was their intention to continue to use the "Multi-Pak" labels as described above until their supply was exhausted as they had used their supply of wrappers for the individual pieces; that a seizure had been instituted against a shipment of such candy charging that the article under seizure was misbranded under 403(e)(2) in that it was a food in package form which failed to bear a label containing an accurate statement of the quantity of contents; and that some packages of "Tootsie Rolls" designated as vend-packs and labeled " $1\frac{1}{4}$ ounces" or " $1\frac{3}{4}$ ounces" were collected by inspectors of Food and Drug Administration and found to be short of the declared weight.

The complaint alleged also that despite the warnings conveyed to the defendants by such inspections and seizure, the defendants continued to distribute in interstate commerce in violation of the Act, candy which was misbranded within the meaning of 403(e)(2) in the manner described above.

DISPOSITION: On 8-8-61, a temporary restraining order was entered and on 8-17-61, the defendants having consented, a decree of permanent injunction was entered restraining the defendants from directly or indirectly introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce in violation of the Act, any "Tootsie Rolls" Multi-Pak or "Tootsie Rolls" vend-packs and so distributing or otherwise disposing of "Tootsie Rolls" then being held at any of the defendants' plants, warehouses, or otherwise under their control, which were misbranded within the meaning of 403(e)(2) as alleged in the complaint unless and until the net weight statement was corrected.

29238. Candy. (F.D.C. No. 48856. S. Nos. 82-514 V, 82-516 V.)

QUANTITY: 11 10-lb. bulk cases and 35 cases, each containing 12 7-oz. bags of licorice rolls; and 66 cases, each containing 24 $5\frac{1}{2}$ -oz. bags of Rocket Pops, at Linden, N.J., in possession of Eljay Service.

SHIPPED: Between 1-4-63 and 3-21-63, the Rocket Pops from Middletown, Pa., by Pennbrook Candy Co., Inc., and the licorice rolls from New York, N.Y.

LABEL IN PART: (Bag) "Eljay Imported Licorice Rolls Ingredients * * * U.S. Certified Colors * * * M'f'd. for Eljay Service Linden, N.J."; (bag) "Eljay Rocket Pops * * * Ingredients * * * Artificial Flavors, U.S. Certified Color * * * Mfd. For Eljay Service, Linden, N.J."

RESULTS OF INVESTIGATION: The licorice rolls had been shipped in bulk and had been intended to be repacked by the dealer into bags labeled as described above; the 35-case lot of licorice rolls had been repacked by the dealer. The Rocket Pops had been packed by the shipper in bags supplied by the dealer.

The licorice rolls (bulk and repacked) consisted of individually wrapped pieces of candy; each wrapper had a silver-and-black foil overwrap bearing the name "Liquorice Rolls." The Rocket Pops consisted of variously colored, individually cellophane wrapped lollipops on white cardboard sticks. The Rocket Pops and the repacked licorice rolls were packed and the bulk licorice

rolls were intended to be packed in clear cellophane bags on which the distributor's name and address, the quantity of contents, ingredients statements and statements of artificial flavoring and coloring were printed in small type, in colors which were similar to the colors of the product and which did not afford adequate contrast with the candies and candy wrappers in the background.

LIBELED: 4-25-63, Dist. N.J.

CHARGE: 403(f)—the Rocket Pops when shipped, and the licorice rolls (bulk and repacked) while held for sale, were misbranded in that the information required to appear on the label and labeling under 403(e) (1) and (2), 403 (i) (2) and 403(k), namely, the name and address of the manufacturer, packer, or distributor, an accurate statement of quantity of the contents, the statement of ingredients, and the declaration of artificial flavoring and coloring, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 11-15-63. Default—destruction.

SUGAR AND HONEY

29239. Sugar. (F.D.C. No. 49098. S. No. 54-158 V.)

QUANTITY: 30 50-lb. bags and 341 100-lb. bags at Salina and Smolan, Kans.

SHIPPED: 3-14-63, from Juniata, Nebr., by CB&Q Railroad, Freight Claims Dept.

RESULTS OF INVESTIGATION: Analysis showed that the sugar contained approximately 3 parts per million of arsenic compound and approximately 3.020 parts per million of boron compound. Investigation disclosed that the article was salvaged sugar from a train wreck in which rail cars containing sugar and borax were involved, and that the sugar had been dumped on the ground where it may have become contaminated with an arsenical weed killer used to treat the track right-of-way.

LIBELED: 7-2-63, Dist. Kans.

CHARGE: 402(a) (2) (A)—when shipped, contained added poisonous deleterious substances, namely, arsenic and boron compounds, which were unsafe within the meaning of 406.

DISPOSITION: 8-23-63. Default—destruction.

29240. Sugar. (F.D.C. No. 47631. S. No. 20-653 T.)

QUANTITY: 14,736 110-lb. bags, at Brownsville, Tex., in possession of Gulfside Warehouse, Inc.

SHIPPED: Between 12-1-61 and 12-31-61, from Mexico.

LIBELED: 6-6-62, S. Dist. Tex.

CHARGE: 402(a) (3)—contained rodent urine and bird excreta; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 6-27-63. Consent—claimed by M. Golodetz & Co., New York, N.Y., and reconditioned.

29241. Sugar and various dried peas and beans. (F.D.C. No. 48983. S. Nos. 76-884/93 V, 76-895 V.)

QUANTITY: 84 25-lb. bags, 162 100-lb. bags, and 53 50-lb. bags of sugar; 15 100-lb. bags and 100 25-lb. bags of pinto beans; 15 100-lb. bags of red beans;

12 25-lb. bags of black-eyed peas; 61 25-lb. bags of small red beans; 41 25-lb. bags of Great Northern beans; and 10 25-lb. bags of split green peas; at Kansas City, Mo., in possession of Better Foods Wholesale Grocery Co.

SHIPPED: Between 10-22-62 and 3-12-63, from Salt Lake City, Utah, and Gering and Morrill, Nebr.

LIBELED: 5-23-63, W. Dist. Mo.

CHARGE: 402(a)(3)—the sugar, the 15-bag lot of pinto beans, and the Great Northern beans contained rodent urine and excreta pellets, the red beans contained rodent urine; and 402(a)(4)—all the articles were held under insanitary conditions.

DISPOSITION: 7-15-63. Consent—claimed by Better Foods Wholesale Grocery Co. and destroyed because the articles had been damaged during a fire on 8-29-63.

29242. Honey. (F.D.C. No. 48728. S. No. 46-518 V.)

QUANTITY: 36 cases, each containing 12 jars, at St. Louis, Mo.

SHIPPED: 1-31-63, from Batesville, Ark., by Wilson Honey Co.

LABEL IN PART: (Jar) "Wilson's Wild Flower Net Wt. 1 Lb. U.S. Grade A Honey Produced & Packed by Vaughn Wilson Route 4, Batesville, Arkansas."

RESULTS OF INVESTIGATIONS: The article was approximately 3 percent short weight.

LIBELED: 6-26-63, E. Dist. Mo.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents, since the label statement "Net Wt. 1 Lb." was inaccurate.

DISPOSITION: 8-30-63. Default—delivered to charitable institutions.

DAIRY PRODUCTS*

CHEESE

29243. Grated cheese. (F.D.C. No. 48208. S. Nos. 87-003/4 T.)

QUANTITY: 15 cases, each containing 2 boxes of 12 3-oz. cans and 20 cases, each containing 12 1-lb. cans, at Chicago, Ill.

SHIPPED: 6-13-62 and 8-21-62, from Lena, Wis., by Frigo Bros. Cheese Corp.

LABEL IN PART: (Can) "Aged Cheese Frigo * * * Grated Fancy Genuine Italian Cheese Inc.: Parmesan, Romano Asiago Cheese * * * Frigo Cheese Corp. Lena, Wis."

LIBELED: 10-1-62, N. Dist. Ill.

CHARGE: 403(a)—when shipped, the label statement "Fancy Genuine Italian Cheese" was false and misleading, as applied to a product consisting of cheeses of domestic origin, and for which no fancy grade had been established.

DISPOSITION: 12-20-62. Consent—claimed by Frigo Bros. Cheese Corp., for relabeling.

MISCELLANEOUS DAIRY PRODUCTS

29244. Nonfat dry milk. (F.D.C. No. 48990. S. No. 61-234 V.)

QUANTITY: 92 50-lb. bags, at Corpus Christi, Tex., in possession of Scogin Wholesale Grocery.

*See also Nos. 29234, 29235.

SHIPPED: 1-28-63 and prior to 5-7-63, from Stillwater, Minn.

LIBELED: 5-29-63, S. Dist. Tex.

CHARGE: 402(a) (3)—contained roach excreta pellets, insect parts, and mold;
and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 7-20-63. Default—destruction.

29245. Nonfat dry milk and soy flour (2 seizure actions). (F.D.C. No. 49286.
S. Nos. 46-065/6 X.)

QUANTITY: 103 100-lb. bags of nonfat dry milk, and 8 100-lb. bags of soy
flour, at St. Louis, Mo., in possession of Dixie Cream Flour Co.

SHIPPED: 10-29-62 and 6-3-63, from Cairo and Decatur, Ill.

LIBELED: 8-27-63, E. Dist. Mo.

CHARGE: 402(a) (3)—the nonfat dry milk contained insects; and 402(a) (4)—
both articles were held under insanitary conditions.

DISPOSITION: 10-4-63 and 10-8-63. Default—destruction.

EGGS

29246. Frozen eggs. (F.D.C. No. 48599. S. No. 13-424 V.)

QUANTITY: 265 30-lb. cans at Chicago, Ill.

SHIPPED: 10-29-62, from Los Angeles, Calif., by Dairy Fresh Associated Foods
Co.

LABEL IN PART: (Can) "Whole Eggs * * * Packed by Dairy Fresh Products
Co., Los Angeles."

LIBELED: 1-9-63, N. Dist. Ill.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 3-1-63. Consent—claimed by Dairy Fresh Associated Foods Co.
Segregated; 40 cans denatured.

29247. Frozen eggs. (F.D.C. No. 49423. S. No. 32-833 X.)

QUANTITY: 58 unlabeled 30-lb. cans at Las Vegas, Nev.

SHIPPED: 9-27-63, from Yucaipa, Calif., by Olson Bros., Inc.

LIBELED: 10-17-63, Dist. Nev.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 10-25-63. Consent—destruction.

29248. Frozen eggs. (F.D.C. No. 49431. S. Nos. 31-322 X, 32-834 X.)

QUANTITY: 82 unlabeled 30-lb. cans at Las Vegas, Nev.

SHIPPED: Between 9-16-63 and 10-4-63, from Banning, Calif.

LIBELED: 10-29-63, Dist. Nev.

CHARGE: 402(a) (3)—contained decomposed eggs while held for sale.

DISPOSITION: 11-8-63. Consent—destruction.

29249. Frozen eggs. (F.D.C. No. 49394. S. Nos. 41-841/4 X, 41-581/3 X.)

QUANTITY: 730 30-lb. unlabeled cans at Jersey City, N.J.

SHIPPED: Between 6-15-63 and 9-1-63, from Mineola, Tex.

RESULTS OF INVESTIGATION: The article had been prepared in Clifton, N.J., from shell eggs shipped as above and then delivered to Jersey City, N.J., for storage.

LIBELED: 10-10-63, Dist. N.J.

CHARGE: 402(a)(3)—contained decomposed eggs while held for sale.

DISPOSITION: 11-18-63. Default—destruction.

29250. Frozen eggs. (F.D.C. No. 49320. S. No. 15-138 X.)

QUANTITY: 48 30-lb. cans at Louisville, Ky.

SHIPPED: On unknown dates, shell eggs had been shipped from the State of Indiana.

LABEL IN PART: (Can) "Frozen Whole Eggs * * * Packed By Cox Poultry Farm Valley Station, Ky."

RESULTS OF INVESTIGATION: Investigation showed that Cox Poultry Farm had prepared and packed the article from shell eggs received from various egg producers in the State of Indiana.

LIBELED: 9-17-63, W. Dist. Ky.

CHARGE: 402(a)(3)—contained decomposed eggs while held for sale.

DISPOSITION: 11-27-63. Default—destruction.

FEEDS AND GRAINS

29251. Shelled feed corn. (F.D.C. No. 48930. S. Nos. 16-001/2 V.)

INFORMATION FILED: 9-6-63, S. Dist. Ind., against Funk Bros. Seed Co., a corporation, Rockville, Ind.

SHIPPED: Between 10-15-62 and 10-17-62, from Indiana to Illinois.

CHARGE: 402(a)(2)(B)—when shipped, the article was a raw agricultural commodity and it bore and contained a pesticide chemical, captan, which was unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on shelled feed corn had been prescribed.

PLEA: Guilty.

DISPOSITION: 10-10-63. \$200 fine, plus costs.

29252. Tankage and meat and bone scraps. (F.D.C. No. 48768. S. Nos. 33-619/20 V.)

QUANTITY: 143 100-lb. bags of tankage, and 41 100-lb. bags of meat and bone scraps, at St. Paul, Minn.

SHIPPED: 11-5-62 and 2-14-63, from Meriden, Iowa, by Fredrickson Grain Co.

LABEL IN PART: (Tag) "Top-Flyte Brand 60% Digester Tankage * * * Mid-America Milling Company, 34th and Grover, Omaha, Nebraska * * * Ingredients: Meat Residue"; and (tag) "Top-Flyte 50% Meat and Bone Scraps * * * Mid-America Milling Company * * * Ingredients: Meat Residue and Bone."

LIBELED: 5-9-63, Dist. Minn.

CHARGE: 402(a)(2)(C)—when shipped, the articles contained a food additive, namely, leather with chromium salt, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409; 402(b)(4)—leather with chromium salt had been added to the articles or mixed or packed therewith

to increase their bulk or weight; and 403(a)—the names “digester tankage” and “meat and bone scraps” were false and misleading as applied to articles in which leather with chromium salt had been substituted in part for digester tankage and meat and bone scraps.

DISPOSITION: 6-20-63. Consent—claimed by Mid-America Milling Co., and released under bond for reconditioning.

FISH AND SHELLFISH

29253. Frozen whitefish. (F.D.C. No. 49328. S. Nos. 70-751 X, 70-755 X.)

QUANTITY: 76 65-lb. boxes at Buffalo, N.Y.

SHIPPED: 8-27-63, from Detroit, Mich., by J. Kozloff Fish Distributors, Inc.

LABEL IN PART: (Box) “Product of Canada Dressed Medium Whitefish * * * XADA Inspected 810 * * * Gett Fisheries * * * Big Peter Pond Lake Sask.”

LIBELED: 9-25-63, W. Dist. N.Y.

CHARGE: 402(a)(3)—contained parasitic worms when shipped.

DISPOSITION: 11-15-63. Consent—claimed by the shipper for exportation to the original foreign supplier.

29254. Frozen perch fillets. (F.D.C. No. 49065. S. Nos. 56-255/6 V.)

QUANTITY: 535 ctns., each containing 12 1-lb. pkgs., at Gloucester, Mass.

SHIPPED: These fillets were from fish caught by the fishing vessel “Mary Ann” in the waters of the Atlantic Ocean outside the territorial limits of the State of Massachusetts, and landed at Gloucester, Mass., on 5-20-63.

LIBELED: 6-5-63, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 8-12-63. Consent—claimed by American Fillet Corp., Gloucester, Mass., and destroyed.

29255. Canned tunafish. (F.D.C. No. 48977. S. Nos. 60-549/50 V, 18-801 X.)

QUANTITY: 846 cases, each containing 48 6-oz. cans, at Dallas, Tex.

SHIPPED: 2-20-63 and 3-14-63, from Terminal Island, Calif., by J. R. Barry & Co.

LABEL IN PART: (Can) “Hi-Note Brand Blended Dark and Light Tuna Flakes South Sales Co. Distributors Terminal Island, Calif.”

LIBELED: 5-28-63, N. Dist. Tex.

CHARGE: 402(b)(2)—when shipped, fragments of bones and scales were substituted in whole or in part for tunafish; and 403(g)(1)—the article failed to conform to the definition and standard of identity for canned tuna since it contained fragments of bones and scales which are not permitted as ingredients of tunafish in such definition and standard.

DISPOSITION: 11-8-63. Consent—claimed by California Marine Curing & Packing Co., for relabeling as cat food.

29256. Frozen oysters. (F.D.C. No. 49070. S. Nos. 79-483/4 V.)

QUANTITY: 13 cases and 73 cases, each case containing 12 12-oz. cans, at Denver, Colo.

SHIPPED: 1-18-63 and 5-1-63, from Chicago, Ill., and Brownsville, Tex., by Booth Fisheries Corp.

LABEL IN PART: (Can) "Booth Frozen Oysters * * * Distributed by Booth Fisheries Corporation General Offices Chicago, Illinois."

RESULTS OF INVESTIGATION: Examination showed that the average drained liquid was 42.6 percent (13-case lot) and 28.4 percent (73-case lot).

LIBELED: 6-10-63, Dist. Colo.

CHARGE: 402(b)(2)—when shipped, water had been substituted in part for oysters; 403(a)—the label statement "Oysters" was false and misleading as applied to a product consisting in part of water; and 403(i)(2)—the label failed to bear the common or usual name of each ingredient, since added water had not been declared.

DISPOSITION: 8-1-63. Default—destruction.

FRUITS AND VEGETABLES

CANNED FRUIT

29257. Canned peaches. (F.D.C. No. 49329. S. Nos. 4-947 X, 5-704 X.)

QUANTITY: 528 cases, each containing 24 1-lb. 13-oz. cans, at Richmond, Va.

SHIPPED: Between 7-13-63 and 8-23-63, from Monticello, Ga., by Henderson's Cold Storage, Inc.

LABEL IN PART: (Can) "Betty Ann Yellow Freestone Peaches Halves in Heavy Syrup * * *. Packed by Henderson's Cold Storage, Inc. Monticello, Ga."

LIBELED: 9-13-63, E. Dist. Va.

CHARGE: 403(h)(1)—when shipped, the article failed to conform to the standard of quality for canned peaches, in that all peach units of the article tested were not pierced by a weight of not more than 300 grams, and its label failed to bear a statement that it fell below such standard.

DISPOSITION: 11-12-63. Consent—claimed by Henderson's Cold Storage, Inc., for relabeling.

29258. Canned peaches. (F.D.C. No. 49372. S. No. 1-874 X.)

QUANTITY: 375 cases, each containing 24 1-lb. 3-oz. cans, at Tampa, Fla.

SHIPPED: 7-21-63, from Meansville, Ga., by Roberts Canning Co.

LABEL IN PART: (Can) "Sunny Land Halves Yellow Freestone Peaches In Heavy Syrup * * * Packed by Roberts Canning Co. Meansville, Ga."

LIBELED: On or about 10-14-63, M. Dist. Fla.

CHARGE: 403(g)(2)—when shipped, the article purported to be and was represented as canned peaches, a food for which a definition and standard of identity had been prescribed by regulations, and its label failed to bear the name of the optional packing medium present in such food, since the article was packed in a medium designated as "Light Sirup" by such definition and standard.

DISPOSITION: 12-13-63. Consent—claimed by Roberts Canning Co., for relabeling.

29259. Canned plums. (F.D.C. No. 49508. S. No. 40-655 X.)

QUANTITY: 158 cases, each containing 24 1-lb. 13-oz. cans, at Mt. Kisco, N.Y.

SHIPPED: 9-6-63, from Upland, Calif., by Old Ranchers Canning Co., Inc.

LABEL IN PART: (Can) "Ranch House Brand El Dorado Home Style Whole California Red Plums Packed in Heavy Syrup * * * Packed by Old Ranchers Company, Upland Calif."

LIBELED: On or about 11-6-63, S. Dist. N.Y.

CHARGE: 402(a) (3)—contained rot when shipped.

DISPOSITION: 1-29-64. Default—destruction.

29260. Canned plums. (F.D.C. No. 49440. S. No. 11-791 X.)

QUANTITY: 41 cases, each containing 24 1-lb. 13-oz. cans, at Vestal, N.Y.

SHIPPED: 8-13-63, from San Francisco, Calif., by Mel-Williams Co.

LABEL IN PART: (Can) "Ranch House Brand El Dorado Home Style Whole California Red Plums Packed In Heavy Syrup * * * Packed by Old Ranchers Canning Company, Upland, Calif."

LIBELED: 11-13-63, N. Dist. N.Y.

CHARGE: 402(a) (3)—contained insects, insect eggs, and decomposed fruit when shipped.

DISPOSITION: 1-30-64. Default—destruction.

VEGETABLES AND VEGETABLE PRODUCTS*

29261. Fresh broccoli. (F.D.C. No. 49421. S. No. 78-102 X.)

QUANTITY: 594 boxes, each containing 14 bunches, at Philadelphia, Pa.

SHIPPED: 10-8-63, from Salinas, Calif., by H. W. Mann Packing Co.

LABEL IN PART: (Box) "14 Bunches Broccoli California Sunny Shores Vegetables—H. W. Mann—Salinas, Calif."

LIBELED: 10-15-63, E. Dist. Pa.

CHARGE: 402(a) (2) (B)—when shipped, the article was a raw agricultural commodity and contained a pesticide chemical, endrin, which was unsafe within the meaning of 408(a) since no tolerance or exemption from a tolerance for such pesticide chemical on broccoli had been prescribed by regulations.

DISPOSITION: 10-16-63. Consent—destruction.

29262. Fresh cabbage. (F.D.C. No. 49379. S. No. 36-738 X.)

QUANTITY: 76 50-lb. bags at Hattiesburg, Miss.

SHIPPED: 9-18-63, from Bovina, Tex., by Gateway Produce Co.

LIBELED: 10-7-63, S. Dist. Miss.

CHARGE: 402(a) (2) (B)—when shipped, the article was a raw agricultural commodity and contained a pesticide chemical, endrin, which was unsafe under 408(a) since the quantity of such pesticide chemical on the cabbage was not within the limits of the tolerance prescribed by regulations.

DISPOSITION: 10-17-63. Consent—destruction.

29263. Fresh cabbage. (F.D.C. No. 49326. S. No. 5-824 X.)

QUANTITY: 65 50-lb. bags at Nashville, Tenn.

SHIPPED: 9-12-63, from Fancy Gap, Va., by Newman Grocery & Produce Co.

LABEL IN PART: (Bag) "Fresh Green Cabbage."

LIBELED: 9-20-63, M. Dist. Tenn.

*See also No. 29241.

CHARGE: 402(a)(2)(B)—when shipped, the article contained a pesticide chemical, toxaphene, which was unsafe within the meaning of 408(a) since the quantity of such pesticide chemical on the article was not within the limits of the tolerance prescribed by regulations.

DISPOSITION: 11-5-63. Default—destruction.

29264. Fresh carrots. (F.D.C. No. 49259. S. No. 5-724 X.)

QUANTITY: 500 bags, each containing 48 1-lb. bags, at Baltimore, Md.

SHIPPED: 8-23-63, from Hereford, Tex., by Salt River Valley Produce of Texas, Inc.

LABEL IN PART: (Bag) "Silent Sam Carrots * * * Grown and Shipped By Salt River Valley Produce of Texas, Inc. * * * Net Wt. 1 Pound."

LIBELED: 9-6-63, Dist. Md.

CHARGE: 402(a)(2)(B)—when shipped, the article was a raw agricultural commodity and contained a pesticide chemical, endrin, which was unsafe under 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on carrots had been prescribed by regulations.

DISPOSITION: 10-9-63. Default—destruction.

29265. Fresh carrots. (F.D.C. No. 49395. S. No. 39-008 X.)

QUANTITY: 643 shipping bags, each containing 48 1-lb. bags, at Brooklyn, N.Y.

SHIPPED: 9-11-63, from Hereford, Tex., by F. H. Vahlsing, Inc.

LABEL IN PART: (1-lb. bag) "Garden Gold Fresh Carrots * * * Horlings-Lea Incorporated, Zellwood, Florida Packers and Shippers Florida, Texas, & California Carrots."

LIBELED: 9-23-63, E. Dist. N.Y.

CHARGE: 402(a)(2)(B)—when shipped, the article contained the pesticide chemical, endrin, for which no tolerance on carrots or exemption therefrom has been prescribed.

DISPOSITION: 10-10-63. Default—destruction.

29266. Crushed peppers and cinnamon sticks. (F.D.C. No. 48858. S. Nos. 31-588/9 V.)

QUANTITY: 61 cases, each containing 30 pkgs. of crushed peppers, and 26 cases, each containing 36 pkgs. of cinnamon sticks, at Los Angeles, Calif., in possession of Service Foods, Inc.

SHIPPED: Prior to 3-20-63, from outside the United States.

LABEL IN PART: (Pkg.) "Crushed Peppers Minimum Net Wt. 3½ Oz. Service Foods Los Angeles 18, Calif.," and "Cinnamon Minimum Net 1¼ Oz. Service Foods Los Angeles 18, Calif."

RESULTS OF INVESTIGATION: The articles had been repacked by the dealer after having been imported into the United States. The peppers were approximately 3 percent short weight and the cinnamon approximately 2 percent. The articles were contained in clear cellophane bags on which the firm's name and address were printed vertically on the back of the package in red ink in small type which was inconspicuous on the package of crushed peppers in that it was blurred and did not contrast with the article within the package. The quantity of contents statement on the front of the package was also in red ink

which did not contrast well with the red peppers in the background, and was confused by a lace-like white design in the background.

LIBELED: 4-22-63, S. Dist. Calif.

CHARGE: 403(e) (2)—while held for sale, both articles failed to bear a label containing an accurate statement of the quantity of the contents, since the label statements (crushed peppers) “3½ Oz.” and (cinnamon) “1¼ Oz.” were inaccurate; and 403(f)—while held for sale, the information required to appear on label of the red peppers under 403(e) (1) and (2), namely, the name and address of the packer, and the quantity of contents statement, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: 6-7-63. Consent—claimed by Service Foods, Los Angeles, Calif., and released under bond for relabeling.

29267. Canned corn. (F.D.C. No. 49226. S. No. 4-100 X.)

QUANTITY: 174 cases, 24 cans each, at Raleigh, N.C.

SHIPPED: 7-17-63, from Leslie, Md., by Consolidated Cannery Corp.

LABEL IN PART: (Can) “Red Cross Brand Whole Kernel Golden Sweet Corn Net Contents 1 Lb. Distributed by Consolidated Cannery Corp. Baltimore, Maryland.”

LIBELED: 8-30-63, E. Dist. N.C.

CHARGE: 403(h) (1)—when shipped, the quality of the article fell below the standard of quality for canned whole kernel sweet corn since it contained more than one brown or black discolored kernel or piece of kernel for each 2 ounces of drained weight, and its label failed to bear a statement that it fell below such standard.

DISPOSITION: 10-16-63. Default—destruction.

29268. Canned peas. (F.D.C. No. 49034. S. No. 36-853 X.)

QUANTITY: 300 cases, each containing 24 15-oz. cans, at Lafayette, La.

SHIPPED: 4-9-63, from Haskell, Okla., by Haskell Foods, Inc.

LABEL IN PART: (Can) “Lahoma Dried Early June Peas Packed from Dry Stock * * * Haskell Foods Inc. Packers & Distributors Haskell, Oklahoma.”

LIBELED: 7-11-63, W. Dist. La.

CHARGE: 403(a)—when shipped, the label vignette depicting succulent green peas was false and misleading as applied to a product prepared from dried peas; and 403(h) (1)—the article fell below the standard of quality for canned peas since it contained more than 25 percent by count of peas ruptured to a width of more than 1/16 inch and the article was a smooth skin variety of peas; and the alcohol insoluble solids of peas in the container was more than 23.5 percent and the label failed to bear a statement that it fell below such standard.

DISPOSITION: 9-3-63. Default—delivered to a charitable institution for use therein.

29269. Canned peas. (F.D.C. No. 48434. S. No. 16-729 V.)

QUANTITY: 505 cases, each containing 24 15-oz. cans, at Nashville, Tenn.

SHIPPED: Between 6-20-62 and 10-12-62, from Cullman, Ala., by King Pharr Canning Operations, Inc.

LABEL IN PART: (Can) "King Pharr Early June Peas Packed from Dried Peas * * * King Pharr Canning Operations, Inc. Packers and Distributors Cullman, Ala."

LIBELED: 12-19-62, M. Dist. Tenn.

CHARGE: 403(a)—when shipped, the label statement "Early June Peas" and the label vignette depicting succulent peas were false and misleading as applied to a product prepared from dried peas; 403(g)(2)—the label of the article bore the name "Early June Peas" instead of "Dried Early June Peas" as specified in the definition and standard of identity for such canned peas; and 403(h)(1)—the quality of the article fell below the standard of quality for canned peas since more than 25 percent by count of the peas contained in the cans were ruptured to a width of more than $\frac{1}{16}$ inch and its label failed to bear a statement that it fell below such standard.

DISPOSITION: 2-12-63. Default—delivered to 6 charitable institutions.

29270. Canned pimentos. (F.D.C. No. 47443. S. Nos. 39 T, 55-364 T.)

QUANTITY: 123 cases, each containing 24 28-oz. cans, at Jacksonville, Fla.

SHIPPED: 12-1-61, from New York, N.Y.

RESULTS OF INVESTIGATION: Examination showed that the article contained abnormal cans and was undergoing progressive decomposition.

LIBELED: 4-12-62, S. Dist. Fla.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 1-31-63. Consent—claimed by Vega Trading Co., Inc., New York, N.Y., and released under bond for export to the original foreign supplier.

29271. Dried chili peppers. (F.D.C. No. 49062. S. No. 30-450 X, 30-452 X.)

QUANTITY: 9 200-lb. bags, one unlabeled drum, containing approximately 80 lbs., and 2 100-lb. bags at Santa Ana, Calif.

SHIPPED: Between 4-19-62 and 5-28-63, from Ensenada, Mexico.

LIBELED: 7-30-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insect webbing, excreta, and moldy peppers while held for sale.

DISPOSITION: 9-13-63. Default—destruction.

29272. Hot finger peppers. (F.D.C. No. 49209. S. No. 5-326 X.)

QUANTITY: 90 cases, each containing 12 1-qt. jars, at Baltimore, Md.

SHIPPED: 7-1-63 or 7-9-63, from Philadelphia, Pa., by Louis Shupack Co.

LABEL IN PART: (Jar) "Fyne-Taste brand * * * Hot Finger Peppers * * * Distributed by Tulip, Inc., Phila. 34, Pa."

LIBELED: 7-30-63, Dist. Md.

CHARGE: 402(a)(3)—contained *Drosophila* flies, eggs, and maggots when shipped.

DISPOSITION: 8-23-63. Consent—destruction.

29273. Pickles. (F.D.C. No. 48545. S. Nos. 71-171 T, 71-173 T, 91-143 T, 74-172 V.)

INFORMATION FILED: 5-22-63, N. Dist. Tex., against Craddock Foods, Div. of Morton Foods, a corporation, Garland, Tex., and Joe E. Shelton, Jr., vice president.

SHIPPED: Between 5-7-62 and 5-6-63, from Texas to Oklahoma.

LABEL IN PART: (Jar) "Crispy Brand One Pint Sweet Mixed Pickles Mfg. By Garland Foods Co., Garland, Texas"; "Betty Brand One Pint Sweet Chips Mfg. By Craddock Food Mfg. Co., Inc., Garland, Texas."

CHARGE: 402(a)(3)—contained rodent hairs, insects, and insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-22-63. Corporation fined \$2,000; individual fined \$500.

MEAT PRODUCTS AND POULTRY

29274. Frozen pork skins. (F.D.C. No. 48792. S. No. 47-505 V.)

QUANTITY: 263 60-lb. boxes, at Memphis, Tenn.

SHIPPED: 4-16-63, from Chicago, Ill., by Intercontinental Meat Traders.

LABEL IN PART: "Pork Skins."

LIBELED: 5-28-63, W. Dist. Tenn.

CHARGE: 402(a)(3)—contained dirt, loose hairs, and decomposed pork skins when shipped.

DISPOSITION: 6-28-63. Default—destruction.

29275. Canned chicken (2 seizure actions). (F.D.C. No. 49250. S. Nos. 24-425 X, 24-428 X.)

QUANTITY: 31 cases, 12 cans each, at LaPorte, Ind., and 24 cases, 12 cans each, at Hammond, Ind.

SHIPPED: 2-26-63 and 4-10-63, from Waterloo, Iowa.

LIBELED: 9-6-63 and 9-9-63, N. Dist. Ind.

CHARGE: 402(a)(3)—contained decomposed chickens while held for sale.

DISPOSITION: 10-16-63 and 10-18-63. Default—destruction.

29276. Boneless turkey rolls. (F.D.C. No. 49221. S. No. 2-410 X.)

QUANTITY: 7 cases, each containing 8 ctns., at Miami, Fla.

SHIPPED: 4-19-63, from Philadelphia, Pa., by Superior Provisions, Inc.

LABEL IN PART: (Ctn.) "Superior White Meat Boneless Turkey Roll Partially Cooked * * * Packed by Superior Provisions, Inc. * * * Philadelphia 22, Pa."

LIBELED: 9-3-63, S. Dist. Fla.

CHARGE: 402(a)(1)—when shipped, the article contained an added poisonous or deleterious substance, namely, pathogenic microorganisms, *Salmonella*, which may render it injurious to health.

DISPOSITION: 1-6-64. Default—destruction.

29277. Boneless turkey rolls. (F.D.C. No. 49016. S. No. 10-282 X.)

QUANTITY: 4 ctns., each containing 8 pkgs., at Buffalo, N.Y.

SHIPPED: 4-16-63, from Philadelphia, Pa., by Superior Provisions, Inc.

LABEL IN PART: (Pkg.) "Superior Dark Meat Boneless Turkey Roll Packed by Superior Provisions, Inc. Philadelphia 22, Pa."

LIBELED: 6-26-63, W. Dist. N.Y.

CHARGE: 402(a)(1)—when shipped, contained poisonous or deleterious substances, namely, *Salmonella muenchen* and *Salmonella derby*, which may have rendered it injurious to health.

DISPOSITION: 8-12-63. Default—destruction.

NUTS

29278. Unshelled almonds. (F.D.C. No. 49524. S. Nos. 43-388/9 X.)

QUANTITY: 21 100-lb. bags and 1 80-lb. bag at Conshohocken, Pa.

SHIPPED: 10-26-62 and 11-9-62, from Chico, Calif.

LIBELED: 11-21-63, E. Dist. Pa.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-30-63. Default—destruction.

29279. Unshelled mixed nuts. (F.D.C. No. 49621. S. Nos. 28-368/9 X.)

QUANTITY: 37 cases, each containing 24 1-lb. pkgs. and 41 50-lb. cases, at Salina, Kans.

SHIPPED: 10-8-63, from Portland, Oreg., by Hudson House, Inc.

LABEL IN PART: (Pkg.) "Snoboy Extra Fancy Mixed Nuts Packed for Snoboy, Inc., Minneapolis, Minn.—Seattle, Wn"; and (50-lb. case) "Extra Fancy In Shell Snoboy Mixed Nuts Packed for Snoboy, Inc., Minneapolis, Minn.—Seattle, Wn."

LIBELED: 12-2-63, Dist. Kans.

CHARGE: 402(a)(3)—when shipped, both lots contained rancid, moldy nuts, and the 37-case lot contained shriveled nuts and empty shells.

DISPOSITION: 12-12-63. Consent—claimed by Pacific Gamble Robinson Co., Minneapolis, Minn. Segregated; 344 lbs. destroyed.

29280. Unshelled mixed nuts. (F.D.C. No. 49512. S. No. 2-429 X.)

QUANTITY: 19 cases, each containing 24 1-lb. pkgs., at Miami, Fla.

SHIPPED: 10-14-63, from New York, N.Y., by Graham Co., Inc.

LABEL IN PART: (Pkg.) "Broadway Extra Fancy Mixed Nuts Walnuts-Brazils-Filberts-Almonds-Pecans Packed by The Graham Co., Inc., New York, N.Y."

LIBELED: 11-22-63, S. Dist. Fla.

CHARGE: 402(a)(3)—contained decomposed pecans when shipped.

DISPOSITION: 2-3-64. Default—destruction.

29281. Shelled peanuts. (F.D.C. No. 48794. S. No. 72-225 V.)

QUANTITY: 125 125-lb. bags at Cincinnati, Ohio, in possession of Baltimore & Ohio Railroad Warehouse.

SHIPPED: 7-11-62, from Dawson, Ga.

LIBELED: 5-29-63, S. Dist. Ohio.

CHARGE: 402(a)(4)—held under insanitary conditions.

DISPOSITION: 6-24-63. Consent—claimed by The Baltimore & Ohio Railroad Co. and denatured for use as animal feed.

29282. Shelled Spanish peanuts. (F.D.C. No. 49333. S. No. 19-361 X.)

QUANTITY: 5 120-lb. bags at Oklahoma City, Okla.

SHIPPED: 8-14-63, from Denison, Tex., by Denison Peanut Co.

LABEL IN PART: (Tag) "This Bag Contains Shelled Spanish No. 2 Peanuts
* * * Denison Peanut Company Denison, Texas."

LIBELED: 9-12-63, W. Dist. Okla.

CHARGE: 402(a)(3)—contained insects, insect larvae, and insect parts; and
402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 10-23-63. Default—delivered for use as animal feed.

SPICES, FLAVORS, AND SEASONING MATERIALS*

29283. Caraway seed and green coffee beans (2 seizure actions). (F.D.C. No. 49308. S. Nos. 46-077 X; 46-078/9 X.)

QUANTITY: 122 108-lb. bags of caraway seed and 30 132-lb. bags of green coffee beans, at St. Louis, Mo., in possession of Star Coffee Co.

SHIPPED: Between 6-26-63 and 8-9-63, coffee beans from New Orleans, La., and caraway seeds from Brooklyn, N.Y.

LIBELED: 9-10-63, E. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: On 10-1-63, the Star Coffee Co. claimed the articles, denied that the articles were adulterated, but in the interest of avoiding litigation and dispute, prayed the court for leave to destroy the articles and further prayed that upon such destruction the action be dismissed. On 10-3-63, in accordance with the above and on motion of the parties, the court ordered that the claimant destroy the articles and that upon such destruction, the action be dismissed. On 10-8-63, the articles were destroyed.

29284. Safflower seed. (F.D.C. No. 48746. S. No. 63-881 V.)

QUANTITY: 350 tons, at Norwalk, Calif., in possession of Liberty Vegetable Oil Co.

SHIPPED: Between 6-26-62 and 8-2-62, from Arizona to California.

LIBELED: 4-11-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects and insect larvae; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-30-63. Consent—claimed by Liberty Vegetable Oil Co., and denatured for industrial use.

29285. Saffron. (F.D.C. No. 48762. S. No. 50-245 V.)

QUANTITY: 5 cases, each containing 12 display cards containing 24 unlabeled vials, at San Francisco, Calif.

SHIPPED: Between 11-9-62 and 3-15-63, from New York, N.Y., by H. Schoenfeld & Sons.

LABEL IN PART: (Display card) "Sunred * * * Imported Pure Spanish Saffron Azafran Puro * * * Imported & packed by Schoenfeld & Sons Paprika Exchange of America New York."

RESULTS OF INVESTIGATION: Analysis showed that the article contained potassium nitrate.

LIBELED: 5-16-63, N. Dist. Calif.

*See also No. 29266.

CHARGE: 402(a)(2)(C)—contained a food additive, namely, potassium nitrate, which was unsafe within the meaning of 409, since it and its use or intended use were not in conformity with a regulation or exemption in effect; 402(b)(2)—potassium nitrate had been substituted in whole or in part for saffron; 403(a)—the label statement (display card) "Azafran Puro" (pure saffron), was false and misleading; 403(e)(1)—the article failed to bear a label (vial) containing the name and address of the manufacturer, packer or distributor; and 403(i)(2)—the label failed to bear the common or usual name of each ingredient when shipped.

DISPOSITION: 6-26-63. Default—destruction.

29286. Salt tablets. (F.D.C. No. 48456. S. Nos. 10-421 V, 10-423 V.)

QUANTITY: 282 35-lb. bags of 75-grain tablets, and 145 35-lb. bags of 150-grain tablets, at Sheridan, N.Y., in possession of Sheridan Canning Co.

SHIPPED: 7-17-62, from Rittman, Ohio.

LIBELED: 11-26-62, W. Dist. N.Y.

CHARGE: 402(a)(3)—contained rodent excreta (282-bag lot), and rodent hairs (145-bag lot); and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 5-13-63. Consent—claimed by Albert Van Dette, t/a Sheridan Canning Co. Segregated; 32 bags destroyed.

29287. Oregano. (F.D.C. No. 49270. S. No. 31-546 X.)

QUANTITY: 648 200-lb. bags, at Los Angeles, Calif., in possession of Central Terminal Warehouse.

SHIPPED: Prior to 5-15-62, from Mexico.

LIBELED: 8-9-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 10-3-63. Consent—claimed by Thos. P. Gonzalez Corp., Los Angeles, Calif. Segregated; 24,972 lbs. destroyed.

29288. Poppyseed. (F.D.C. No. 49477. S. No. 52-703 X.)

QUANTITY: 42 109-lb. bags at Seattle, Wash., in possession of Port of Seattle, Pier 29.

SHIPPED: 4-27-63, from Rotterdam, Holland.

LIBELED: 10-18-63, W. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-24-63. Default—destruction.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE

29289. Blackstrap molasses tablets. (F.D.C. No. 48282. S. No. 33-642 V.)

QUANTITY: 71 150-tablet btls. and 54 300-tablet btls. at Minneapolis, Minn.

SHIPPED: 6-18-62 and 9-10-62, from Newark, N.J., by Plantation Foods, Inc.

LABEL IN PART: (Btl.) "Plantation 'The Original' Brand Blackstrap Molasses Vi-Tabs * * * Dehydrated Blackstrap Molasses Distributed by Plantation Foods, Inc., Newark, New Jersey * * * A rich natural source of vitamins and minerals."

LIBELED: 11-8-62, Dist. Minn.

CHARGE: 403(j)—when shipped, the article purported to be a food for special dietary use by reason of its vitamin and mineral content and its label failed to bear, as required by regulations, a statement of the proportion of the minimum daily requirements of vitamin B₁, iron, and calcium supplied by such food when consumed in a specified quantity during a period of one day, and a statement of the quantity of vitamin B₁, iron, and calcium in a specified quantity of such food.

The article was alleged also to be misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7398.

DISPOSITION: 1-4-63. Default—destruction.

29290. Dietary food supplement. (F.D.C. No. 49350. S. No. 54-870 V.)

QUANTITY: 135 300-gm. ctns. at Kansas City, Mo.

SHIPPED: On or about 3-16-61, from Beverly Hills, Calif.

RESULTS OF INVESTIGATION: Examination showed that the article contained approximately 75 percent of the declared amount of vitamin C.

LIBELED: On or about 9-25-63, W. Dist. Mo.

CHARGE: 403(a)—while held for sale, the label statement "Contents of 1 Baby-Pak daily will supply * * * Vitamin C * * * 60 mg." was false and misleading as applied to a product containing less than the declared amount of vitamin C.

DISPOSITION: 12-5-63. Default—destruction.

29291. Liquid vitamin supplements. (F.D.C. No. 49109. S. Nos. 23-545/9 V, 22-601/4 X.)

QUANTITY: 10 cases, each containing 12 btls., and 233 btls. of Tri-Vida Drops, and 72 cases, each containing 12 btls., of Vides Drops at Salt Lake City, Utah.

SHIPPED: Between 12-28-62 and 5-2-63, from Culver City, Calif., by Leo Linden Laboratories, Inc.

LABEL IN PART: (Btl.) "Tri-Vida Drops 30 cc. * * * Each 0.6 cc contains * * * Supplied by Deseret Pharmaceutical Co. Salt Lake City, Utah," and "Vides Drops 30 cc. * * * Each 0.6 cc. Contains * * * Supplied by Deseret Pharmaceutical Co. Salt Lake City, Utah."

RESULTS OF INVESTIGATION: Examination showed that the articles were short in volume.

LIBELED: 7-23-63, Dist. Utah.

CHARGE: 403(e)(2)—the label of the article failed to bear an accurate statement of the quantity of contents when shipped.

DISPOSITION: 11-8-63. Default—destruction.

29292. Various dietary products. (Inj. No. 377.)

COMPLAINT FOR INJUNCTION FILED: 10-9-61, W. Dist. Pa., against Nutrition Square, Inc., Lackzoom Co., Inc., Nato Labs., Inc., Stylex, Inc., Modern Foods,

Inc., and General Nutrition Corp., located at Pittsburgh and Carnegie, Pa., and t/a Natural Sales Co., Vitamin Sales Co., and Pile Aids Co.

CHARGE: The complaint alleged that the defendants were engaged in receiving from interstate sources and packing, repacking, labeling, relabeling, selling, and distributing singly and in combination, various dietary products; and that in connection with such business the defendants employed the following written, printed, and graphic material: catalogues entitled "Vitamin Sales Catalogue, 1960 Edition," "Natural Foods don't Have to be Expensive," "Genuine Nutrition Square Vitamins at Discount House Prices," and "Vitamin Sales Co. Brings You Lower Than Wholesale Prices! . . . 1960 Price List"; folder entitled "Exciting Health News for Nutritionally-Deficient Men and Women Over 40"; sheets entitled "Nato C-900," "Now a New Development in Natural Source Supplementation!," and "Chewy! Luscious! Unique New Vita-Chews"; folder entitled "The new convenient easy way to get All of the Natural Organic Vitamins Daily"; sheets entitled "Nato Laboratories Order Form" and "Special Husband and Wife Offer"; catalogue entitled "1960 Edition . . . Vitamin Sales Catalog."

The complaint alleged further that the defendants caused the dietary products to be adulterated and misbranded while held for sale after shipment in interstate commerce, and that they also caused such adulterated and misbranded products to be introduced and delivered for introduction into interstate commerce. The names of the products and the manner in which they were adulterated and misbranded as alleged in the complaint are set forth below:

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
All-Vite Tabs Code 81.	403(a)	Falsely represented to be high potency vitamin-mineral formula.
	402(a)(2)(C)	Contained food additives unsafe within the meaning of 409.
Biovin tablets Code 17.	403(a)	Falsely represented as "Extra Potent" and "A Most Complete Balanced Formula."
	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
Corvite tablets Code 17.	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
	403(a)	Statement that minimum daily requirements for nicotinamide not established was false.
	403(j)	Failed to bear minimum daily requirement for nicotinamide as required by regulation.
	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
Juvelol capsules----	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
	403(f)	Label statements not sufficiently conspicuous.

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
Maxitron capsules --	403(a)	Falsely stated the minimum daily requirement for niacinamide has not been established.
	403(j)	Label failed to bear statement of minimum daily requirements for niacinamide as required by regulation.
	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
Mulplex capsules ---	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
	403(a)	Falsely stated the minimum daily requirements for niacinamide has not been established.
	403(j)	Label failed to bear statements of minimum daily requirements for niacinamide as required by regulation.
Multi-Mineral tablets.	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
Code 31 Multiple Vitamins and Minerals Lo-Cal.	403(a)	Falsely stated minimum daily requirement for niacinamide had not been established.
		Misleading to state contains as much vitamin A as in 3 qts. of whole milk, as much vitamin D as in 1½ pounds of butter, and as much vitamin B-6 as in 1½ pounds of potatoes.
	403(j)	Label failed to bear statement of minimum daily requirements for niacinamide as required by regulation.
	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
Naturex tablets ----	402(a)(2)(C)	Contained food additive unsafe within meaning of 409.
Prenatal Code 58 tablets.	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.
Desiccated Liver fortified with Folic Acid and B-12 7½-gr. tablets.	402(a)(2)(C)	Contained food additive unsafe within meaning of 409.
	403(j)	Represented to be a food for special use and its label failed to bear information concerning its dietary properties as required by regulation in view of its desiccated liver content.
Folic Acid Vitamin B-12 and Desiccated Liver Tablets 7½-grain tablets.	402(a)(2)(C)	Contained food additive unsafe within meaning of 409.
Gerovite tablets	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
GGF capsules-----	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
Hemotrex-----	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
Hemotrin-----	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
High Potency B Complex tablets.	403(a)	Falsely represented as High Potency; falsely stated the need for niacinamide in human nutrition has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacinamide as required by regulations.
	402(a) (2) (C)	Contained food additive unsafe within meaning of 409.
Juvelmin capsules---	403(f)	Label statements not sufficiently conspicuous.
Code 16 Solotron tablets.	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
Stress-O-Vite tablets.	403(a)	Falsely stated the minimum daily requirements for niacinamide had not been established.
	403(j)	Label failed to bear statement of minimum daily requirements for niacinamide as required by regulations.
	403(f)	Label statements not sufficiently conspicuous.
	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
Stresstron tablets---	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
	403(a)	Falsely stated the minimum daily requirements for niacinamide had not been established.
	403(j)	Label failed to bear statement of minimum daily requirements for niacinamide as required by regulations.
Supertron-----	403(a)	Falsely represented to be high potency vitamin-mineral formula; and falsely stated the minimum daily requirements for niacinamide had not been established.
	403(j)	Label failed to bear statement of minimum daily requirements for niacinamide as required by regulations.
	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
Tonetrone capsules--	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
Tonetron capsules— Continued	403(a)	Falsely stated the minimum daily requirements for niacinamide had not been established.
	403(j)	Label failed to bear statement of minimum daily requirement for niacinamide as required by regulations.
Treovim 62 tablets..	402(a) (2) (C)	Contained food additives unsafe within meaning of 409.
	403(a)	Falsely represented as a most complete formula; falsely stated minimum daily requirements for niacin had not been established.
	403(j)	Label failed to bear statement of minimum daily requirement for niacin as required by regulations.
Malex capsules-----	403(a)	Falsely stated the minimum daily requirement for niacin is not established and that the need in human nutrition for vitamin E has not been established.
	402(a) (2) (C)	Contained a food additive unsafe within the meaning of 409.
	403(j)	Failed to bear the minimum daily requirements for niacin as required by regulations.
Miner-all capsules..	402(a) (2) (C)	Contained a food additive unsafe within meaning of 409.
Onem capsules-----	403(a)	Falsely stated the minimum daily requirement for niacin is not established. Falsely stated the need in human nutrition for vitamin E and niacin had not been established.
	402(a) (2) (C)	Contained a food additive unsafe within meaning of 409.
	403(j)	Failed to bear the minimum daily requirements for niacin as required by regulations.
Superex tablets-----	403(a)	Falsely stated that the need in human nutrition for vitamin E had not been established.
	402(a) (2) (C)	Contained a food additive unsafe within meaning of 409.
T D Vites capsules..	403(f)	Label statements not sufficiently conspicuous.
Vita-Chews tablets..	403(a)	Falsely represented to be of high potency.
	403(j)	Label statements not sufficiently conspicuous.

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
Rice Polishings----- 8½-gr. tabs.	403(j)	Represented to be a food for special dietary use and label failed to bear statement of the minimum daily requirements of its vitamin content as required by regulation.
Rose Hips Powder--	403(j)	Represented to be a food for special dietary use and label failed to bear statement of the minimum daily requirements of its vitamin content as required by regulation.
Toasted Wheat Germ.	403(j)	Represented to be a food for special dietary use and label failed to bear statement of the minimum daily requirements of its vitamin content as required by regulation; and label failed to bear statement of the minimum daily requirements of its mineral content or protein content as required by regulation.
Raw Wheat Germ--	403(j)	Represented to be a food for special dietary use and label failed to bear statement of the minimum daily requirements of its vitamin content as required by regulation; and label failed to bear statement of the minimum daily requirements of its mineral content or protein content as required by regulation.
Amino Wafers-----	403(a)	Name falsely represented the article contained free amino acids.
Bone Meal tablets--	403(a)	Name falsely represented the article to be bone meal.
Ferrodine Iodine Ration.	403(a)	The article was kelp tablets and was not so designated.
	402(a)(2)(C)	Contained a food additive unsafe within the meaning of 409.
Iodine Ration-----	403(a)	The article was kelp tablets and was not so designated.
	402(a)(2)(C)	Contained a food additive unsafe within the meaning of 409.
Lecithin capsules---	403(a)	Name falsely represented the article to be lecithin.
Soybean Lecithin and Soybean Oil capsules.	403(a)	Name misleading since the article contained other ingredients in addition to soybean lecithin and soybean oil.
Appetone tablets-----	403(a)	Falsely stated the minimum daily requirement for niacin has not been established.

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
Appetone tablets— Continued	403(j)	Failed to bear the minimum daily requirement for niacin as required by regulation.
B-Plex with Vitamin C Tablets and B.C. Plex Tablets	403(a)	Falsely stated the minimum daily requirement for nicotinamide has not been established.
	403(j)	Failed to bear the minimum daily requirement for nicotinamide as required by regulation.
BeneVim tablets----	403(a)	Falsely stated the minimum daily requirement for niacin has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacin as required by regulation.
Brewers' Dried Yeast tablets.	403(j)	Failed to bear the minimum daily requirement for niacin as required by regulation.
CeeBees capsules---	403(a)	Falsely stated the minimum daily requirement for niacin has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacin as required by regulation.
Code 11 Multiple Vitamin capsules.	403(a)	Falsely stated the minimum daily requirement for niacinamide has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacinamide as required by regulation.
Gere-Nat tablets---	403(f)	Label statements not sufficiently conspicuous.
Homobone-----	403(a)	Misleading to declare contains in one can the calcium content of 27 quarts of milk or 120 pounds of white bread, and the phosphorus content of almost 5 dozen eggs or 60 pounds of white bread.
Improved B Com- plex tablets.	403(a)	Falsely stated the minimum daily requirement for niacin has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacin as required by regulation.
Improved B-For- mula tablets.	403(a)	Falsely stated the minimum daily requirement for niacin has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacin as required by regulation.

<i>Article</i>	<i>Sec. of Act Violated</i>	<i>Specification of Violation</i>
Morvite tablets----	402(a)(2)(C)	Contained a food additive unsafe within the meaning of 409.
Code 14 Therapeutic Multi Vitamins	403(a)	Falsely represented to be a food as it is a drug since the ingredients are in excess of the potencies required in a food for special dietary use.
Niacinamide tablets-	403(a)	Falsely stated the minimum daily requirement for niacinamide has not been established.
	403(j)	Failed to bear the minimum daily requirement for niacinamide as required by regulation.
Organic Bone Meal-	403(j)	Represented to be a food for special dietary use by reason of its iron content and its label failed to bear information concerning its mineral properties as required by regulation.
Pro-Hemo tablets---	403(a)	Falsely stated the minimum daily requirement for niacin is not established.
	403(j)	Failed to declare the minimum daily requirement for niacin and iron as required by regulation.
Suproday tablets---	403(a)	Falsely represented as a preventive of depletion of energy.
Ultraplex tablets---	403(a)	Misleading to call "high potency."
V-day capsules-----	403(j)	Failed to declare the minimum daily requirement for niacin as required by regulation.
	403(a)	Misleading to call "high potency" and that the article is in proper balance.
	403(a)	Falsely represented that the minimum daily requirement for niacin has not been established.
Vitaloz Lozenges---	403(a)	Falsely represented that the minimum daily requirement for niacinamide has not been established.
	403(j)	Failed to declare the minimum daily requirement for niacinamide as required by regulation.
Vitamin A 50,000 Units capsules	403(a)	Falsely represented that it was a food in view of its high potency which makes it a drug.
Vitamin A 25,000 Units	403(a)	Falsely represented that it was a food in view of its high potency which makes it a drug.
Vitatron capsules---	402(a)(2)(C)	Contained food additives unsafe within meaning of 409.

The complaint alleged also that certain products, including a number of the above-named, were misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 7308.

The complaint alleged further that the defendants were well aware that the products were misbranded; that establishment inspections had been made of defendants' premises on 2-20-52, 5-29-58, 12-1-59, and 1-5-60; that the defendants had responded to a Notice of Hearing which was held on 1-29-59; that a seizure was made of defendants' goods in 1949; and that a criminal prosecution for violation of the Act was pending against Nutrition Square, Inc.; that, despite the warnings conveyed by such inspection, hearing, seizure and prosecution, the defendants continued to violate the Act; and that the defendants had on hand stocks of the above-named products, the bulk raw materials for such products, and the above-named written, printed, and graphic matter, which stocks constituted a menace to interstate commerce.

DISPOSITION: 10-9-61. The defendants having consented, the court entered a decree perpetually enjoining and restraining the defendants (1) from introducing into interstate commerce, any of the above-named products (in bulk and as repacked) adulterated and misbranded as alleged in the complaint, and any other products adulterated and misbranded in a similar manner; and (2) doing any act with respect to such products which result in such products being so adulterated or misbranded while held for sale by the defendants after shipment in interstate commerce. The decree provided also that such stocks of the products, other than those of no value which were then on hand at defendants' place of business, be relabeled so as to be brought into compliance with the Act and that all of the catalogues, folders, and sheets described above, and any similar material being held at defendants' place of business be destroyed.

29293. Hadacol capsules. (F.D.C. No. 48116. S. No. 57-063 T.)

QUANTITY: 28 25-capsule btls. and 22 50-capsule btls. at Harlingen, Tex.

SHIPPED: 11-16-59, from Memphis, Tenn.

LABEL IN PART: (Btl.) "Hadacol * * * A Dietary Supplement * * * Each Hadacol capsule contains * * * Folic Acid, USP 0.25 mg."

LIBELED: 9-28-62, S. Dist. Tex.

CHARGE: 402(a) (2) (C)—while held for sale, the article contained a food additive, namely, folic acid, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409.

The article was alleged also to be misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7438.

DISPOSITION: 10-27-62. Default—destruction.

29294. Hexavitamin capsules. (F.D.C. No. 49126. S. No. 66-389 V.)

QUANTITY: 127 cases, each containing 12 500-capsule btls., at South Hackensack, N.J.

SHIPPED: On an unknown date, part of the article had been shipped from Bedford, Mass. This was a return shipment.

RESULTS OF INVESTIGATION: The article was a commingled lot comprised of capsules returned from Bedford, Mass., and those returned from a local consignee. Analysis showed that the article contained approximately 77 percent of the declared amount of thiamine hydrochloride.

LIBELED: On or about 8-1-63, Dist. N.J.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent, thiamine hydrochloride, has been in part, omitted or abstracted from the article; and 403(a)—the label statement “Each capsule contains * * * Thiamine HCl 2mg.” was false and misleading as applied to a product containing less than the declared amount of this ingredient.

DISPOSITION: 9-19-63. Default—destruction.

29295. Lecitabs (lecithin tablets). (F.D.C. No. 48127. S. No. 65-297 T.)

QUANTITY: 120 90-tablet btls., 144 180-tablet btls., and 118 540-tablet btls., at Glendale, Calif.

SHIPPED: 7-25-61 and 8-1-62, from Chicago, Ill., by National Lecithin, Inc.

LABEL IN PART: “National Lecitabs Lecithin Tablets * * * Ingredients: Soya Lecithin, in a base of non-fat, dry milk solids and soy protein. Natural flavoring added. Sole Distributors: National Lecithin, Inc. Chicago 26, Ill. * * * a dietary supplement of natural lipotropic factors. * * * as an aid in lowering blood cholesterol.”

LIBELED: 10-9-62, S. Dist. Calif.

CHARGE: 403(j)—when shipped, the article purported to be and was represented as a food for special dietary use by reason of its choline and inositol content and its label failed to bear as required by regulation a statement of the quantity of choline and inositol in a specified quantity of the food.

The libel alleged also that the article was misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7402.

DISPOSITION: 1-29-63. Default—destruction.

29296. Various safflower oil and gluten products. (F.D.C. No. 47440. S. Nos. 5-525 T, 5-527/30 T.)

QUANTITY: 18 100-capsule btls. of safflower oil capsules, 46 12-oz. pkgs. of gluten self-rising flour, 12 3-oz. pkgs. of gluten noodles, 10 3-oz. pkgs. of gluten spaghetti, and 10 3-oz. pkgs. of gluten macaroni, at Richmond, Va., in possession of Thalhimers Department Store.

SHIPPED: Between 2-20-62 and 3-30-62, from New York, N.Y., by Balanced Foods, Inc.

LABEL IN PART: (Btl.) “100 Noble 1150 Mgs. Safflower Oil Capsules with 10 Mgs. B-6 Noble Nutritional Foods, Inc. Dist. New York, N.Y. Each Capsule Contains,” (pkg.) “Be Diet-Wise with Dia-Mel No Salt Added dietetic self-rising (gluten) flour specially prepared for low sodium and starch restricted diets 3 Sealed Packets * * * Ingredients * * * Packed by Dietetic Food Co., Inc., Brooklyn, N.Y.,” (pkg.) “Dia-Mel dietetic Gluten Noodles * * * Specially prepared for starch restricted diets Packed by Dietetic Food Co., Inc., Brooklyn 19, N.Y.,” (pkg.) “Dia-Mel dietetic Gluten Spaghetti Specially prepared for starch restricted diets No Salt Added * * * Packed by Dietetic Food Co., Inc., Brooklyn, N.Y.,” and (pkg.) “Dia-Mel dietetic Macaroni elbow style made from Gluten Flour Specially prepared for starch restricted diets * * * Packed by Dietetic Food Co., Inc., Brooklyn, N.Y.”

LIBELED: 4-9-62, E. Dist. Va.; libel amended 4-12-62.

CHARGE: 403(a)—when shipped, the labels of the articles contained false and misleading representations that the safflower oil capsules were of significant value for special dietary supplementation by reason of the presence therein of

safflower oil; and that the gluten flour, noodles, spaghetti, and macaroni were of special significance for starch and sugar restricted diets.

The libel alleged also that the articles together with certain other products were misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7401.

DISPOSITION: On 5-9-62, the articles were claimed by Balanced Foods, Inc., New York, N.Y., and an answer was filed by Balanced Foods, Inc., denying that the articles were misbranded. Thereafter, the case was removed for trial to the Eastern District of New York. On 5-25-62, Dietetic Food Co., Inc., answered the libel and denied that the products packed by them, namely, the gluten flour, noodles, spaghetti and macaroni, were misbranded. On 6-25-62, Balanced Foods Co., Inc., withdrew its claim to the goods. On or about 6-28-62, Dietetic Food Co., Inc., filed a claim to the gluten flour, noodles, spaghetti, and macaroni. On 8-3-62, a default decree of condemnation and destruction was filed with respect to the articles containing safflower oil. On 8-14-62, such articles were destroyed. On 1-3-63, the action, with respect to the gluten flour, noodles, spaghetti, and macaroni was dismissed, without prejudice, upon the motion of the United States Attorney on the grounds that these articles constituting the *res* of the action were no longer in existence, since they had been inadvertently destroyed thereby rendering the action moot.

29297. Nyal Ny-Vim Vitamin and Mineral Compound. (F.D.C. No. 45903. S. No. 34-372 R.)

QUANTITY: 720 16-oz. btls., at Yonkers, N.Y., in possession of Nyal Co., Inc.

SHIPPED: The article was manufactured by the dealer from raw materials shipped during October 1960, from Newark, N.J.

LABEL IN PART: "Nyal Ny-Vim Vitamin and Mineral Compound Fortified with Vitamin B₁ and Iron * * * Daily Directions * * * Supply * * * Vitamin D 624 U.S.P. Units * * * Nyal Company, Inc., Distributors, New York, N.Y."

RESULTS OF INVESTIGATION: The article was found to contain about 60 percent of the labeled amount of vitamin D.

LIBELED: 5-25-61, S. Dist. N.Y.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent vitamin D had been in part omitted or abstracted therefrom; and 403(a)—the label statement "Daily directions (1 tablespoonful four times a day) Supply * * * Vitamin D 624 U.S.P. Units" was false and misleading.

DISPOSITION: 6-23-61. Default—destruction.

29298. Sea kelp powder and Kelp-Ettes. (F.D.C. No. 46561. S. No. 21-857 R.)

QUANTITY: 70 100-lb. drums of sea kelp powder and 397 100-tablet btls. of Kelp-Ettes, at Hobart, Ind., in possession of Nelson's Natural Foods.

SHIPPED: The bulk sea kelp was shipped on 3-8-61, from San Pedro, Calif.

LABEL IN PART: (Btl.) "500 5 Grain Tablets * * * Nelson's Kelp-Ettes A Pure Sea Food Containing Safe Natural Iodine. Made from Pacific Coast Giant Brown Sea-Kelp (*Macrocystis Pyrifera*) * * * Packed and Distributed by: Nelson's Natural Foods."

ACCOMPANYING LABELING: Leaflet entitled "Have You Checked Your Eating Habits Lately?"; and mimeographed sheets entitled "Alcohol or Poor Diet," "Who Is More Important? A New Born Baby or You? Think It Over!," and "Do You Play the Game of Life to Win?"

RESULTS OF INVESTIGATION: The accompanying leaflets and mimeographed sheets were used by the dealer in promoting the sales of the article. The Kelp-Ettes had been prepared and entabled by the dealer using a portion of the bulk powder.

LIBELED: 10-10-61, N. Dist. Ind.

CHARGE: 403(a)—while held for sale, the accompanying labeling of the article contained false and misleading representations that the article may be consumed with safety in any amount, that the article was of unusual benefit for special dietary supplementation as a source of minerals, vitamins and trace elements; and that the ordinary individual requires daily food supplementation.

The libel alleged also that the article was misbranded under provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7404.

DISPOSITION: On 12-21-61, Carl A. Nelson, owner and operator of Nelson's Natural Foods, filed an answer consenting to a decree. On 1-24-62, a consent decree of condemnation was entered. On 2-7-62, the articles were released under a \$500 bond to the claimant for the purpose of bringing the article into compliance with the law. On 9-20-62, a motion was filed to declare forfeiture of bond, which motion was based upon claimant's failure to keep the seized lot intact for examination and inspection, in that claimant made 3 shipments of sea kelp without notification to, or authorization from, a representative of the Department of Health, Education, and Welfare. On 10-25-62, the Government's motion was argued before the court and the court declared the bond forfeit. On 10-31-62, a decree of forfeiture was filed.

29299. Vitamin and mineral capsules. (F.D.C. No. 49121. S. Nos. 77-861/5 V.)

QUANTITY: 232 100-capsule btls. of Prenatal vitamin and mineral capsules, 349 50-cc. btls. of Polyvitamin Drops, 307 100-capsule btls. of Geriatric capsules, 404 100-capsule btls. of vitamin and mineral capsules, and 430 100-capsule btls. of Multi-Vitamin Therapeutic capsules, at Toledo, Ohio.

SHIPPED: Prior to 1-1-60, from Detroit, Mich., by Family Vitamin Co., Inc.

LABEL IN PART: (Btl.) "Prenatal Vitamin and Mineral Distributed by Family Vitamin Co., Inc. * * * Detroit 4, Michigan, * * * Each capsule contains * * * Vitamin B₁ 1 Mg."; "Polyvitamin Drops * * * Fruit Flavored For Infants & Children * * * 0.6 cc. (* * *) provides * * * Thiamine (B₁) 1 Mg. * * * Dist. by Family Vitamin Co., Inc. * * * Detroit 4, Mich," "Geriatric Distributed by Family Vitamin Co., Inc. * * * Detroit 4, Michigan, * * * Each capsule contains * * * Vitamin B₁ 5 Mg.," "Vitamin and Mineral Distributed by Family Vitamin Co., Inc., * * * Detroit 4, Michigan * * * Each capsule contains * * * Folic Acid U.S.P. 0.34 Mg.," and "Multi-Vitamin Therapeutic Distributed by Family Vitamin Co., Inc. * * * Detroit 4, Michigan * * * Each capsule contains * * * Vitamin B₁ 10 Mg."

RESULTS OF INVESTIGATION: Analysis showed that the Prenatal vitamin and mineral capsules contained approximately 75 percent; Polyvitamin Drops contained approximately 35 percent; Geriatric capsules contained approximately 70 percent; and the Multi-Vitamin Therapeutic capsules contained approximately 75 percent of the declared amount of vitamin B₁.

LIBELED: 7-24-63, N. Dist. Ohio.

CHARGE: Prenatal vitamin and mineral capsules, Polyvitamin Drops, Geriatric capsules and Multi-Vitamin Therapeutic capsules; 402(b)(1)—while held for sale, the valuable constituent of the article, namely, vitamin B₁, had been in part omitted, or abstracted from the article; 403(a)—the label statements "Each capsule contains * * * Vitamin B₁ 1 Mg.," "A daily dose of 0.6 cc. * * * provides * * * Thiamine (B₁) 1 Mg.," "Each capsule contains * * * Vitamin B₁ 5 Mg." and "Each capsule contains * * * Vitamin B₁ 10 Mg.," were false and misleading;

Vitamin and mineral capsules: 402(a)(2)(C)—while held for sale, the article contained a food additive, namely, folic acid, which was unsafe within the meaning of 409 since it and its use and intended use were not in conformity with a regulation or exemption in effect pursuant to law;

Prenatal vitamin and mineral capsules: 403(j)—when shipped, the article purported to be and was represented as a food for special dietary use, by reason of its mineral content and its label failed to bear as required by regulations a statement of the proportion of the minimum daily requirements for pregnant or lactating women for calcium, phosphorous, and iron supplied by such food when consumed in a specified quantity during a period of one day; and

Geriatric capsules: 403(a)—when shipped, the labeling of the article contained false and misleading representations that the article was of unusual value for special dietary supplementation because the nutritional requirements of the elderly were different from those of adults generally.

DISPOSITION: 8-26-63. Default—destruction.

29300. Ellis Vivo-Tone. (F.D.C. No. 47740. S. Nos. 14-231/3 T.)

QUANTITY: 271 100-capsule btls. of a dietary supplement, 43 100-capsule btls. of lecithin, and 266 100-tablet btls. of alfalfa, at Chicago, Ill., in possession of Ellis Research Laboratories, Inc.

SHIPPED: 6-19-59 and 7-27-59, from Oak Park, Mich.

LABEL IN PART: (Btl.) "9 Ellis Vivo-Tone A Dietary Supplement * * * Essential Unsaturated Fatty Acids As Present in Safflower Oil Plus Vitamin B-6 * * * Control No. 45924; ["10 Vivo-Tone * * * Lecithin With Safflower Oil * * * Control No. 2421"; or "11 Ellis Vivo-Tone * * * Alfalfa 10 gr. Tablets * * * Control No. 3960"] Available only through doctors who provide Micro-Dynameter Analysis * * * Distributed by Ellis Research Labs., Inc., Chicago 11, Illinois."

ACCOMPANYING LABELING: Booklets entitled "An Introduction To Vivo-Tone, A research paper submitted for the exclusive use of Micro-Dynameter users."

RESULTS OF INVESTIGATION: The articles were shipped in bulk lots which were subsequently repacked by the dealer into bottles described above.

LIBELED: 7-26-62, N. Dist. Ill.

CHARGE: 403(j)—the articles purported to be and were represented as special dietary foods and their labels failed to bear, as required by regulations, a statement of the dietary properties upon which such use was based.

The libel alleged also that the articles were misbranded under the provisions of the Act relating to drugs as reported in notices of judgment on drugs and devices, No. 7437.

DISPOSITION: 9-10-62. Default—destruction.

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¹ (29216, 29237, 29292) Injunction issued.² (29296) Seizure contested.

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¹ (29216, 29237, 29292) Injunction issued.
² (29296) Seizure contested.

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¹ (29216, 29237, 29292) Injunction issued.² (29296) Seizure contested.

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¹ (29216, 29237, 29292) Injunction issued.² (29296) Seizure contested.

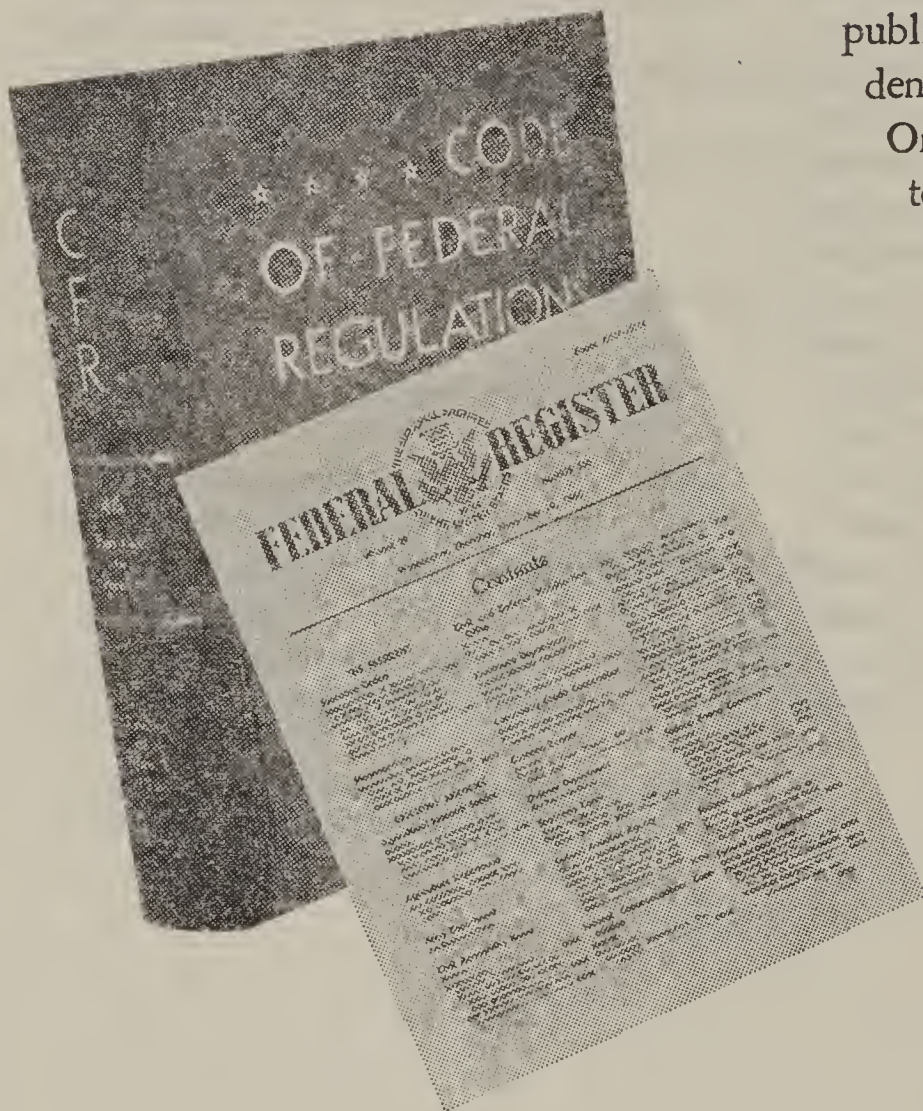
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¹ (29216, 29237, 29292) Injunction issued.

² (29296) Seizure contested.

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U.S. Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD,
DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

29301-29400

FOODS

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were alleged to be adulterated or misbranded within the meaning of the Act, when introduced into and while in interstate commerce, when shipped to a holder of a guaranty, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered upon default, consent, or, in one case, motion for summary judgment, and in which, in one case, a decree of partial discharge and partial relabeling was entered; (2) criminal proceedings which were terminated upon pleas of guilty and nolo contendere, and, in one case, upon a judgment of guilty; and (3) injunction proceedings dismissed subsequent to the granting in one case, and the denial in one case, of temporary restraining orders. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal and injunction proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., August 18, 1964.

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SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN ALLEGED VIOLATIONS REPORTED IN F.N.J. NOS. 29301-29400

Adulteration, Section 402(a)(2)(A), the article bore or contained an added poisonous or added deleterious substance, which was unsafe within the meaning of Section 406; Section 402(a)(2)(B), the article was a raw agricultural commodity and contained a pesticide chemical which was unsafe within the meaning of Section 408(a); Section 402(a)(2)(C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a)(3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a)(4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b)(1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b)(2), a substance had been substituted in whole or in part for the article; Section 402(b)(4), a substance had been added to the article or mixed or packed therewith so as to increase its bulk or weight; Section 402(c), the article contained a color additive which was unsafe within the meaning of Section 706(a); Section 406, a poisonous or deleterious substance was unsafe since such substance was not required in the production of food and could have been avoided by good manufacturing practice; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because no tolerance or exemption from the requirement of a tolerance for such pesticide chemical in or on the raw agricultural commodity had been prescribed by the Secretary of Health, Education, and Welfare; Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use; and Section 706(a), a color additive was deemed to be unsafe because such additive and its use were not in conformity with a regulation listing such additive for a particular use, and such additive was neither from a batch certified for such use, nor had, with respect to such use, been exempted from certification.

Misbranding. Section 403(a), the labeling of the article was false and misleading; Section 403(c), the article was an imitation of another food and its label failed to bear in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; Section 403(e), the article was in package form, and it failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g)(1), the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed by regulations and it failed to conform to such definition and standard; Section 403(h)(1), the article purported to be or was represented as a food for which a standard of quality had been prescribed by regulations, and its quality fell below such standard; Section 403(i)(2), the

article was not subject to the provisions of Section 403(g) and the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; Section 403(j), the article purported to be and was represented for special dietary uses, and its label failed to bear such information concerning its vitamin, mineral, and other dietary properties as the Secretary had determined to be, and by regulation prescribed as, necessary in order fully to inform purchasers as to its value for such uses; and Section 403(k), the article contained a chemical preservative and failed to bear labeling stating that fact.

CEREALS AND CEREAL PRODUCTS

CORNMEAL*

29301. Cornmeal and cooking oil. (F.D.C. No. 49094. S. Nos. 67-500 V, 2-561 X.)

QUANTITY: 1,500 1-lb. 8-oz. bags of cornmeal; and 895 cases each containing 12 1-pt. btls., 1,218 cases each containing 12 1-qt. btls., and 1,114 cases each containing 6 44-oz. btls. of cooking oil, at Jacksonville, Fla.; in possession of Dixie Lily Milling Co. of North Florida.

SHIPPED: Between 2-12-63 and 6-8-63, from Tifton, Ga., and Chattanooga, Tenn.

LABELS IN PART: (Bag) "Dixie Lily Fine Foods Superlative Sifted Water Ground Meal * * * Manufactured and Distributed by Dixie Lily Milling Co. * * * Tampa, Fla.," and (btl.) "Dixie Lily Golden Heart Cooking and Salad Oil Prepared from Pure Vegetable, Citrus Seed and Corn Oils * * * A Blend of Unsaturated Oils * * * Packed and Distributed by Dixie Lily Milling Co., Jacksonville, Florida."

ACCOMPANYING LABELING: Additional repack cornmeal bags, and additional repack cooking oil bottle labels.

RESULTS OF INVESTIGATION: Both the cooking oil and the cornmeal had been shipped in bulk and had been repacked by the dealer.

LIBELED: 7-8-63, M. Dist. Fla.

CHARGE: 403(a)—while held for sale, the labeling of the articles including the name of the cooking oil "Golden Heart Cooking and Salad Oil" contained false and misleading representations that the articles were adequate and effective to prevent premature aging, heart disease, hardening of the arteries, and to lower blood cholesterol levels.

DISPOSITION: On 7-15-63, Dixie Lily Milling Co. of North Florida filed an appearance as owner of the articles, filed a motion to dismiss the libel, and filed a motion to strike that portion of the libel which concerned itself with the vegetable oil and its labels. On 7-17-63, the court granted the claimant's motion to strike that portion of the libel which concerned itself with the vegetable oil and its labels and discharged and released the vegetable oil and its labels, provided the claimant met the further requirements of the court's order. The court required:

(a) That the cornmeal, including all parts thereof, not be repacked in any containers of any size which bore the following language in legible form:

*See also No. 29312.

"For Better Health * * * medical and nutritional research reports indicate beneficial effects of corn oil in lowering blood cholesterol levels, and in turn, possible reduction of individual tendencies toward hardening of the arteries . . . Every package of Dixie Lily is rich in corn oil * * *"
and/or

"use of such cooking oils will diminish incidence of premature aging and heart disease * * *."

(b) That at least two days prior to beginning the repacking of the cornmeal, Dixie Lily Milling Co. of North Florida, notify the Food and Drug Administration, setting forth the time and place of repacking operation and that an officer or employee of the Food and Drug Administration have the right to be present during the repacking operation, and

(c) That the language quoted above at (a) be deleted from the repack bags for the cornmeal held by the marshal and be rendered illegible.

Upon the above conditions the seized cornmeal (as distinguished from the cornmeal containers) and the seized repack bags were discharged and released to the claimant. The motions of the claimant were otherwise denied.

29302. Cornmeal and cornmeal mix. (F.D.C. No. 48192. S. Nos. 77-014/15 T, 77-018 T, 77-038 T, 77-040/41 T, 77-043 T.)

INFORMATION FILED: 2-15-63, W. Dist. N.C., against J. F. Bess & Co., a corporation, Gastonia, N.C.

SHIPPED: 6-15-62 and 7-27-62, from North Carolina to South Carolina.

LABEL IN PART: "White Sail Corn Meal [or "Enriched Self-Rising Corn Meal Mix"] Manufactured by J. F. Bess & Co. Gastonia, N.C."

CHARGE: 402(a)(3)—contained insects and insect parts; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 11-26-63. \$350 fine, and costs.

FLOUR

29303. Flour. (F.D.C. No. 49397. S. No. 49-753 X.)

QUANTITY: 1,000 100-lb. bags at San Francisco, Calif., in possession of Western Pacific Railroad Co.

SHIPPED: 8-30-63, from Salt Lake City, Utah.

RESULTS OF INVESTIGATION: Examination showed that the article was shipped in an insect-infested rail car.

LIBELED: 9-24-63, N. Dist. Calif.

CHARGE: 402(a)(3)—while held for sale and while in transit, the article contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 10-11-63. Consent—claimed by Western Pacific Railroad Co., of San Francisco, Calif., and denatured.

29304. Flour. (F.D.C. No. 49298. S. No. 30-379 X.)

QUANTITY: 91 cases, each containing 25 bags, at Commerce, Calif.

SHIPPED: 8-7-63, from Nephi, Utah, by Jaub Milling & Elevator Co.

LABEL IN PART: (Bag) "MAYFRESH ALL PURPOSE ENRICHED FLOUR * * * 2 Lbs. Net Wt. Distributed by Mayfair Markets, Los Angeles, California."

RESULTS OF INVESTIGATION: Examination showed that the article was short weight.

LIBELED: 9-6-63, S. Dist. Calif.

CHARGE: 403(e) (2)—the article failed to bear a label containing an accurate statement of the quantity of contents when shipped.

DISPOSITION: 10-30-63. Consent—claimed by Mayfair Markets, Vernon, Calif. Segregated; 1,575 short-weight bags emptied and the flour rebagged into 25-lb. bags.

29305. Flour. (F.D.C. No. 49167. S. No. 17-598 V.)

INFORMATION FILED: 11-1-63, E. Dist. Tenn., against Dixie Saving Stores, Inc., Chattanooga, Tenn.

ALLEGED VIOLATION: Between 1-21-63 and 2-2-63, while a quantity of flour was being held for sale after shipment in interstate commerce, the defendant caused the flour to be held in a building that was accessible to birds and rodents and caused the flour to be exposed to contamination by birds and rodents, thereby causing the flour to become adulterated.

CHARGE: 402(a) (4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 11-19-63. \$100 fine.

29306. Flour. (F.D.C. No. 49445. S. Nos. 48-184/85 X.)

QUANTITY: 332 100-lb. bags at Honolulu, Hawaii, in possession of Eagle Macaroni Co., Ltd.

SHIPPED: Between 7-17-63 and 8-16-63, from Portland, Oreg.

LIBELED: 11-12-63, Dist. Hawaii.

CHARGE: 402(a) (3)—contained insects; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 12-13-63. Default—destruction.

29307. Flour. (F.D.C. No. 49033. S. No. 20-422 X.)

QUANTITY: 108 25-lb. bags at Brenham, Tex., in possession of Brenham Wholesale Grocery Co., Inc.

SHIPPED: 5-16-63 and 5-28-63, from Salina, Kans.

LIBELED: 7-10-63, W. Dist. Tex.

CHARGE: 402(a) (3)—contained insects; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 12-16-63. Default—destruction.

29308. Flour. (F.D.C. No. 49530. S. Nos. 46-093 R, 77-311 T, 77-313/14 T, 77-316 T, 811 X.)

INFORMATION FILED: 1-15-64, N. Dist. Ga., against Simpson Andrews Co., a corporation, Marietta, Ga., and Simpson Andrews, president.

ALLEGED VIOLATIONS: Between 9-30-60 and 8-8-63, while flour was being held for sale after shipment in interstate commerce, the defendants caused such flour to be held in a building that was accessible to rodents and insects and to be exposed to contamination by rodents and insects, which acts resulted in the flour being adulterated.

CHARGE: 402(a)(3)—contained insects, insect larvae, insect parts, and rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 2-12-64. Corporation—2 years' probation; individual—\$500 fine.

29309. Flour. (F.D.C. No. 49182. S. Nos. 7-640 V, 8-675 V.)

INFORMATION FILED: 1-8-64, Dist. Conn., against S & R Trading Co., Inc., West Haven, Conn., and Arthur Supowitz, president.

SHIPPED: 4-3-63, from Bridgeport, Conn., to Springfield, Mass.

LABEL IN PART: (Bag) "100 Lbs. Net * * * Flour * * * Minneapolis 2, Minn."

RESULTS OF INVESTIGATION: The flour had been sold to the defendants under a bill of lading reading in part "For salvage disposal a/c car infested" but had been shipped by the defendants to Springfield, Mass., for food use.

CHARGE: 402(a)(3)—when shipped, contained rodent urine and rodent hair fragments; and 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 3-17-64. Corporation—\$1,000 fine; individual—6 months' imprisonment suspended, and probation for 2 years.

29310. Flour and rice. (F.D.C. No. 49409. S. Nos. 46-182 X, 47-356/7 X.)

QUANTITY: 195 50-lb. bags and 53 100-lb. bags of flour and 34 100-lb. bags of rice, at East Peoria, Ill.

SHIPPED: Between 7-2-63 and 7-10-63, the rice by Comet Rice Mills, Inc., from Stuttgart, Ark., and the flour from Cedar Rapids, Iowa.

LABEL IN PART: (Bag) "U.S. No. 2 Ark Rose Rice."

RESULTS OF INVESTIGATION: Examination showed that the articles (all lots) contained live insects. The label of the rice failed to bear the name and address of the manufacturer, packer, or distributor.

LIBELED: 10-15-63, S. Dist. Ill.

CHARGE: 402(a)(3)—while held for sale, the articles contained insects; 403(e)(1)—when shipped, the rice failed to bear a label containing the name and address of the manufacturer, packer, or distributor.

DISPOSITION: 1-16-64. Default—destruction.

29311. Rice flour, soy flour, and black raspberry screenings. (F.D.C. No. 49434. S. Nos. 34-275/77 X.)

QUANTITY: 12 100-lb. bags of rice flour; 2 50-lb. ctns. of black raspberry screenings; and 4 100-lb. bags of soy flour; at Minneapolis, Minn., in possession of Fishers United Supply, Inc.

SHIPPED: Between 12-11-62 and 3-30-63, from Cedar Rapids, Iowa, Decatur, Ill., and Milwaukee, Wis.

LIBELED: 11-5-63, Dist. Minn.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-7-64. Default—destruction.

29312. Cake flour and cornmeal. (F.D.C. No. 48907. S. Nos. 1-392 T, 1-395 T. 2-053 V.)

INFORMATION FILED: 8-7-63, N. Dist. Ga., against M & S Grocery Co., a partnership, Atlanta, Ga.

ALLEGED VIOLATION: Between 3-5-62 and 11-7-62, while quantities of cake flour and cornmeal were being held for sale after shipment in interstate commerce, the defendant caused the articles to be held in a building that was accessible to rodents and caused the articles to be exposed to contamination by rodents, thereby causing the articles to be adulterated.

CHARGE: 402(a)(4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 12-19-63. \$200 fine.

29313. Potato flour. (F.D.C. No. 49510. S. Nos. 52-288/89 X.)

QUANTITY: 288 100-lb. bags at Seattle, Wash.

SHIPPED: 9-21-63, from Jerome, Idaho, by King of Spuds, Inc.

LABEL IN PART: (Bag) "Fine [or "Granular"] King of Spuds Pure Potato Flour Packed by King of Spuds, Inc. East Grand Forks, Minn."

LIBELED: 11-21-63, W. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions prior to shipment.

DISPOSITION: 12-30-63. Default—delivered to a public institution for use as animal feed.

29314. Self-rising flour and hominy grits. (F.D.C. No. 49380. S. Nos. 64-761/64 X.)

QUANTITY: 60 10-lb. bags of all-purpose enriched plain flour; 69 25-lb. bags of presifted enriched self-rising flour; 13 25-lb. bags of self-rising bleached flour; and 80 5-lb. bags of white hominy grits; at Albany, Ga., in possession of Rio Stores, Inc.

SHIPPED: Between 7-16-63 and 8-23-63, from Minneapolis, Minn., Knoxville, Tenn., and Birmingham, Ala.

LIBELED: 10-3-63, M. Dist. Ga.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-9-63. Default—destruction.

MACARONI AND NOODLE PRODUCTS

29315. Noodle products. (Inj. No. 397.)

COMPLAINT FOR INJUNCTION FILED: 2-7-61, N. Dist. Ill., against Chicago Macaroni & Food Products Co., a corporation, Chicago, Ill., and Joseph S. Matalone, president.

CHARGE: The complaint alleged that the defendants were engaged in the business of preparing, packing, holding, and distributing macaroni, spaghetti, noodles, and similar products in interstate commerce, which products were adulterated within the meaning of 402(a)(3) in that they contained insects, insect fragments, rodent hairs, rodent urine, and rodent excreta, and within the meaning of 402(a)(4) in that they were prepared, packed, and held under insanitary conditions.

The complaint alleged also that the insanitary conditions at the defendants' plant at Chicago, Ill., resulted from and consisted of an old building of brick and wood construction in such state of repair that rodents were afforded easy access to the building; on the first floor in the northeast end of the warehouse section there were approximately 1,000 rodent excreta pellets in an area of approximately two square feet, and pellets were near a door that fitted so loosely that rodents were able to enter the building through an opening under the door; in the southwest corner of the first floor rodent pellets were noted along the inside and outside walls of the room and approximately 35 rodent pellets were noted in an area of about one square foot in the southwest corner of this room. The first floor room was used for holding noodles and macaroni products which had been dried and were waiting packaging. The products stored in this room were contained in trays with fine wire mesh bottoms and were stacked on racks. In one of the racks one rodent pellet was found in each of five empty trays, and two rodent pellets were found in one tray. Five pellets were found in one tray containing noodles and one pellet was found in another tray of noodles. All of the noodles containing rodent pellets were analyzed and found to contain rodent urine. In the west room of the fourth floor, approximately 35 rodent pellets were noted in an area of approximately one square foot. On the second floor where spaghetti was discharged from the preliminary drier, approximately 100 rodent pellets were noted in an area of one square foot. On the second floor also in a corner near the spaghetti drying rooms, a dead mouse containing maggots was found. On the third floor the edges of trays containing noodles and awaiting packaging were covered with a deposit of dust.

The complaint alleged further that the defendants were aware that their activities were in violation of the Act; that the defendants had pleaded guilty to criminal charges based on violations of the Act; and that despite this knowledge, the defendants continued to ship such adulterated foods.

DISPOSITION: On 2-8-61, a temporary order was entered restraining the defendants from introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, (1) foods such as spaghetti, macaroni, and noodles or other similar articles which were adulterated within the meaning of 402(a) (3) and (4); (2) and any such foods then held at the defendants' plant unless and until (a) the plant was thoroughly cleaned, renovated, and rendered suitable for use in the preparation, packing, and holding of foods for human consumption, unless and until all rodent and insect filth in and about the plant was eliminated, the means of ingress and egress for rodents and insects were closed, and any similar insanitary conditions which might result in the contamination of foods for human consumption while prepared, packed, or held at the plant were eliminated, and (b) all of the foods on hand at the plant were destroyed, denatured for use as animal feed or otherwise reconditioned under the supervision of the Food and Drug Administration, and (c) an inspection was made and a report made to the court, showing that the insanitary conditions no longer existed and that the foods were brought into compliance with the law.

On stipulation of the parties, the temporary order was extended until 9-15-61. On 9-7-61, the Food and Drug Administration made an inspection and the inspectors were informed that the firm no longer was manufacturing macaroni products and had sold its manufacturing equipment, that articles packed under the firm's brand name were manufactured elsewhere, that the firm had moved to a different building which was being used for the storage

of foods prior to their distribution, and that sanitary conditions were in general satisfactory. Consequently, on 9-27-61, the temporary order was vacated and the case was dismissed.

29316. Noodle products. (F.D.C. No. 48538. S. Nos. 71-134/5 T.)

INDICTMENT RETURNED: 6-11-63, E. Dist. Okla., against Lee Boerstler and C. Ross Boerstler, Henryetta, Okla.

ALLEGED VIOLATION: Between 3-1-62 and 8-31-62, while quantities of macaroni and egg noodles were being held for sale after shipment in interstate commerce, the defendants caused the articles to be held in a building that was accessible to insects and caused the articles to be exposed to contamination by insects, thereby causing the food to become adulterated.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 8-12-63. \$1,000 fine against each defendant.

29317. Frozen noodles. (F.D.C. No. 49340. S. No. 28-474 X.)

QUANTITY: 1,383 cases, each containing 12 8-oz. pkgs., at Kansas City, Kans.

SHIPPED: 7-29-63, from Clive, Iowa, by Reames Home Style Frozen Foods.

LABEL IN PART: (Pkg.) "Reames Home Style Frozen Egg Noodles * * * Four Servings * * * Reames Frozen Foods Clive, Iowa."

LIBELED: 9-18-63, Dist. Kans.

CHARGE: 402(a)(3)—contained *E. coli*, coagulase positive staphylococci, and a high coliform count; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 12-13-63. Default—destruction.

29318. Noodles, macaroni and spaghetti. (F.D.C. No. 49337. S. Nos. 31-426/33 X, 31-435 X.)

QUANTITY: 5 20-lb. cases of shell macaroni; 6 10-lb. cases home style macaroni; 7 20-lb. cases of cut macaroni; 3 10-lb. cases of egg noodles; 2 15-lb. cases of elbow macaroni; 6 10-lb. cases of egg dumplings; 3 10-lb. cases of lasagne; 32 10-lb. cases of medium egg noodles; and 15 10-lb. cases of wide egg noodles; at Phoenix, Ariz.

SHIPPED: Between 12-6-62 and 8-14-63, from Lincoln, Nebr.

LIBELED: 9-12-63, Dist. Ariz.

CHARGE: 402(a)(3)—contained insects and insect larvae while held for sale.

DISPOSITION: 10-31-63. Default—destruction.

29319. Macaroni products. (F.D.C. No. 49306. S. Nos. 22-517/22 X.)

QUANTITY: 14 20-lb. ctns. of spaghettini and 57 20-lb. ctns. of linguine, at Denver, Colo.

SHIPPED: Between 7-1-63 and 8-9-63, from St. Louis, Mo., by Ravarino & Freschi, Inc.

LABEL IN PART: (Ctn.) "R-F * * * La Terminese Enriched Spaghettini * * * Ravarino & Freschi, Inc. St. Louis, Mo.," and "R-F * * * La Terminese Enriched Linguine * * * Ravarino & Freschi, Inc. St. Louis, Mo."

LIBELED: 9-10-63, Dist. Colo.

CHARGE: 402(a)(3)—contained insects when shipped and while held for sale.

DISPOSITION: 10-29-63. Default—delivered to a public institution for use as animal feed.

29320. Spaghetтини, vermicelli, and spaghetti. (F.D.C. No. 49319. S. Nos. 23-131/33 X.)

QUANTITY: 41 20-lb. cases of spaghetтини, 49 20-lb. cases of vermicelli, and 24 20-lb. cases of spaghetti, at Colorado Springs, Colo.

SHIPPED: 8-22-63, from St. Louis, Mo., by Ravarino & Freschi, Inc.

LABEL IN PART: "La Terinese Enriched Spaghetтини [or "Vermicelli" or "Spaghetti"], * * * A Product of Ravarino and Frechi, Inc., St. Louis, Mo."

LIBELED: 9-17-63, Dist. Colo.

CHARGE: 402(a)(3)—contained insects when shipped.

DISPOSITION: 11-5-63. Default—delivered to a public institution for use as animal feed.

29321. Spaghetti (2 seizure actions). (F.D.C. Nos. 46146; 46839. S. Nos. 61-935 R; 35-278 T.)

QUANTITY: 248 cases, each containing 24 7-oz. pkgs. of spaghetti, at Des Moines, Iowa; and 30 cases, each containing 48 7-oz. pkgs. of elbow spaghetti, at Fargo, N. Dak.

SHIPPED: Between 4-5-61 and 9-26-61, from Minneapolis, Minn., by Creamette Co.

LABEL IN PART: (Pkg.) "Thin Spaghetti Italian Style Creamette Brand," and "Mother's Brand Elbow Spaghetti * * * The Creamette Co., Minneapolis, Minnesota."

RESULTS OF INVESTIGATION: The manufacturer's name and address (both lots) and the quantity of contents statements (N. Dak. lot) were inconspicuous due to being printed in black ink on a noncontrasting background of dark green.

LIBELED: 7-28-61, S. Dist. Iowa; 12-8-61, Dist. N. Dak., amended libel 9-17-62, Dist. Minn.

CHARGE: 403(f)—when shipped, the information required to appear on the label under 403(e)(1) and (2), namely, the name and place of business of the manufacturer, packer, or distributor, and the statement of the quantity of contents was not prominently placed thereon, with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: On 8-21-61 and on 2-9-62, the articles having been claimed by the Creamette Co., the actions in S. Dist. Iowa and Dist. N. Dak., respectively, were transferred upon stipulation of the parties to Dist. Minn. for further proceedings. Subsequently, the claimant filed interrogatories which were answered by the Government. On 1-7-63, the claimant having withdrawn its answers, decrees of condemnation were entered and the articles were destroyed.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

29322. Wheat. (Inj. No. 451.)

COMPLAINT FOR INJUNCTION FILED: 3-16-63, N. Dist. N.Y., against Cargill, Inc., Albany, N.Y., Glenn E. Erlandson, grain elevator superintendent, and Donald E. Hart, assistant elevator superintendent.

CHARGE: The complaint alleged that the defendants were engaged in operating a terminal grain elevator which had a capacity of approximately 12 million bushels, was constructed of concrete, and was located immediately west of the Hudson River at the Port of Albany, Albany 7, N.Y., that was owned by the Albany Port Authority, Albany, N.Y., and was leased from that authority by the defendant, Cargill, Inc., and was utilized for the receipt, storage, and shipment of wheat for human consumption, a food within the meaning of the Act; that the terminal grain elevator was a structure which included an easterly row of four 125' x 130' rectangular bins, and a westerly row of four 125' x 130' rectangular bins which rows were situated at the easterly side and westerly side, respectively, of a central row of circular bins, together with additional circular bins to the north and south of those bins; that the four rectangular bins of the easterly row were denominated from north to south as "Bin A," "Bin B," "Bin C," and "Bin D," respectively, and the four rectangular bins of the westerly row were denominated from south to north as "Bin E," "Bin F," "Bin G," and "Bin H," respectively.

It was alleged further that the wheat was being held at the terminal grain elevator under insanitary conditions whereby the food had become contaminated with filth thereby rendering such food adulterated within the meaning of 402(a)(3) and 402(a)(4); that the insanitary conditions of the terminal grain elevator resulted from and consisted of the following conditions: in each of the rectangular bins rodent trails, rodent tunnels, rodent nests, and rodent excreta pellets on the surface of the food; on the walls and roofs of the rectangular bins heavy layers of insect webbing with thousands of insect exit holes and dead insects; in Bin A, 500 fresh rat pellets adjacent to the double door of the bin, 3 dead mice and 1 live mouse; in Bin B, rodent urine on the wheat, 7 live mice, insect webbing, live cadelle larvae and wheat kernels damaged by insects; in Bin D, 4 live mice, and live cadelle beetles; in Bin F, 57 dead pigeons on the surface of the wheat, rodent nests in the feathers of some of the pigeon carcasses, insect webbing, live granary weevils and 4 dead mice; in Bin G, 1 dead and 1 live mouse, live cadelle and dermestid beetles, live and dead granary weevils and 3 foreign grain beetles; in Bin H, a heavy layer of insect webbing on the surface of the wheat, 20 dead mice, 1 live mouse, cadelle beetles and granary weevils; on the passageways between the bins at the top of the elevator, several hundred mouse pellets; on the steel catwalk over the bins, a live mouse; and in the headhouse above the conveyor belts of the elevator, a live pigeon.

The complaint alleged further that the defendants violated the law by causing wheat to be placed in rectangular bins and to be exposed to contamination with filth in that such acts were done after shipment in interstate commerce and resulted in such food being adulterated as specified above; and that the defendant corporation was well aware that its activities were in violation of the Act; that on 1-21-58, a consent decree of permanent injunction was entered in the United States District Court for the District of South Dakota enjoining

*See also No. 29310.

Cargill, Inc., from committing similar violations at its grain elevators and annexes at Claremont and Huffton, S. Dak., (Food Notice of Judgment No. 25165) ; that Cargill, Inc., was also the shipper-of-record of several shipments of rodent-contaminated wheat which were seized and condemned, namely, a shipment from Chester, Mont., libeled on 3-13-62 (Food Notice of Judgment No. 27766), and a shipment from East St. Louis, Ill., libeled on 3-31-60 (Food Notice of Judgment No. 26414) ; and that despite the warnings conveyed to the defendant corporation by the United States Court for the District of South Dakota, and by such seizure actions, the defendants failed to correct the insanitary conditions at their terminal grain elevator at Albany, N.Y., and they continued to violate the Act.

DISPOSITION : On 3-20-63, the court denied a motion for a temporary restraining order which had been sought by the Government at the time the complaint was filed. On or about 4-2-63, the defendants filed an answer in which they admitted the allegations concerning the facts that the action was brought under the Federal Food, Drug, and Cosmetic Act and that Cargill, Inc., was a Delaware corporation trading and doing business at Albany, N. Y., and denied all the other allegations of the complaint.

On 4-3-63, the Government's motion for a preliminary injunction was heard by the court and the defendants moved that the case be dismissed. On 5-20-63, the court rendered the following decision and order :

FOLEY, *District Judge*: "This suit is for injunction and the motion at hand for decision is for a preliminary injunction pending the trial of the issues. The government department complaining is the Food and Drug Administration and the violations charged against the defendants are specified in the complaint as ones involving Sections 331(a), (b), (k) ; 342(a)(3) ; and 342(a)(4) of 21 U.S.C.A. Justice Frankfurter, dissenting, characterized the provisions of the Act as 'x x its meaning can hardly be so clear that he who runs may read, or that even he who reads may read'. (*U.S. v. Sullivan*, 332 U.S. 689, 705).

"However, the factual situation upon which the suit is based as well as the motion for preliminary injunctive relief is a simple one in my judgment. It was clarified by detailed affidavits and exhibits submitted and then the holding of a hearing on April 3, 1963. The minutes of such hearing were ordered by Cargill, Inc., and I have been furnished a copy by the Court Reporter which I shall file with the Clerk. It was my impression at the hearing that the government was weak in its position and such instinctive reaction as a trial judge gave me no fear there was danger to the public interest or health by the existent circumstances on the date of the hearing. Such feeling has now been reinforced after a study of the voluminous briefs and the transcript of testimony. There was no need for quick judicial action and it is my judgment the government should not prevail in the request for grant of serious and drastic injunction.

"The eight large rectangular bins which were the only targets of complaint and criticism were completely empty on March 27, 1963. The Inspector who began the first inspection in November, 1962, testified that tremendous strides of improvement have been made in correcting the undesirable conditions that existed over a period of months. Approximately \$60,000 will be expended to complete extensive alterations and repairs to correct the conditions that previously existed, and the good faith of Cargill and its employees to meet government demands for correction is evident throughout the record. It is also undisputed that the condition was an unforeseen and emergency one caused mainly by the activity of the Port of Albany Commission to dredge and improve its Port as an important asset to commercial development in the northeastern part of New York. I detect no pattern of stubbornness or disinterest for public health on the part of the defendants that would lead to the conclusion that chronic violators of government regulations and statutes should be supervised and struck down by the most serious sanction that a court can grant.

"The significant factors that impel me to my conclusion are these: These rectangular bins are extremely large, and it was admitted by the Examining

Inspector who testified at the hearing that the remedy was to empty them out and then clean and repair. Substantial skimming was done, and when the wheat was transferred to the circular bins, admittedly clean, the wheat was then sampled by licensed inspectors of the Department of Agriculture under the supervision of a government employee of that department. The problem before the defendants was a complicated one and not the one comparable to emptying out the sugar from the sugar container in the pantry and then cleaning it out. The Food and Drug Inspector, and I found him courteous and competent on the witness stand, knew that the wheat was so being transferred and also being shipped out and loaded on ships. There was not the slightest remonstrance or objection on his part although he was aware at all times by official certificates shown to him that the wheat was being transferred and loaded on ships. This lawsuit was a long delayed one, and it seems important to me that with all the weapons at command for seizure and condemnation the Food and Drug Administration did nothing to prevent several million bushels of alleged adulterated wheat to be transferred internally and loaded illegally in ships for export. As stated in *U.S. v. Grant*, 345 U.S. 629, 634, the postponement of suit indicates doubt on the prosecutor's part as much as intransigence on the defendants'. There is also convincing proof that the wheat met government standards that are similar to, if not identical with the standards of the Food and Drug Administration. If I were to accept the contentions advanced in this respect, it would be a serious indictment of the grading responsibilities and standards of the Department of Agriculture, because it would be seriously arguable that its standards allowed a filthy and adulterated product to enter the stream of commerce.

"It is my judgment that the attitude of the government here is mainly pure legalism based upon a commingling of various statutes unsupported by fact. It seems that each contention advanced is sought to be lifted by the bootstraps of the other and none have sufficient quality for logical factual support. The reasonably probable or possible hypothesis that the wheat must be contaminated or adulterated is fiction when disproved by actual, experienced, substantial testing that it is not. Supposition, speculation, and surmise are always weak support for fact-finding directly or by inference. There is also the legal question that the wheat was exempt and properly exportable under 21 U.S.C.A. 381(d): (*U.S. v. Catz American Co.*, 53 F. 2d 425). The only answer to a query along this line by the Inspector to the employees of Cargill was his off-hand, curbstone opinion that he did not consider the wheat in the proper status for exemption.

"Finally, however, the important reason for the denial of the injunction is there is no showing of existent danger or the probability of future violations. (*Swift & Co. v. U.S.*, 276 U.S. 311, 326). This is a cardinal and elemental principle in the exercise of discretion by a Court. In *U.S. v. Grant*, *supra*, pg. 629, such principle was plainly enunciated:

"x x But the moving party must satisfy the Court that relief is needed. The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive. x x x To be considered are the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." (pg. 633).

"There is no need shown for injunction, and the safeguards promised to the government by Cargill, Inc., in the future to alleviate and insure against undesirable conditions of storage at the Port of Albany are commendable and persuasive in the record. The last report of sampling made by the government evidenced by letter dated April 11, 1963 was not introduced in evidence during the hearing but the letter photostat is attached to the Reply Brief of Cargill which I shall file with the Clerk. Such letter indicates that the remaining wheat in the unchallenged circular bins are well within the proper standards for grain of the Food and Drug Administration. The government has gained its goal and the public health interest and pocketbook have been efficiently protected. Common sense often makes good law. (*Peak v. U.S.*, 353 U.S. 43, 46).

"The motion is denied and it is

"So Ordered."

On 6-12-63, pursuant to stipulation between the parties, the court ordered the plaintiff's complaint dismissed upon the merits without costs to any party against the other.

29323. Wheat. (F.D.C. No. 48998. S. No. 34-361 X.)

QUANTITY: 100,800 lbs. at Minneapolis, Minn.

SHIPPED: 5-27-63, from Corinth, N. Dak., by Corinth Farmers Elevator Co.

LIBELED: 6-7-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent pellets when shipped.

DISPOSITION: 7-3-63. Consent—claimed by Corinth Farmers Elevator Co., and denatured.

29324. Wheat. (F.D.C. No. 49030. S. No. 34-696 X.)

QUANTITY: 105,600 lbs. at Duluth, Minn.

SHIPPED: 6-14-63, from Watford City, N. Dak., by Farmers Cooperative Elevator Co.

LIBELED: 7-8-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-29-63. Consent—claimed by Farmers Cooperative Elevator Co., and denatured.

29325. Wheat. (F.D.C. No. 49055. S. No. 34-293 X.)

QUANTITY: 94,200 lbs. at Minneapolis, Minn.

SHIPPED: 7-7-63, from Eureka, S. Dak., by Eureka Equity Exchange.

LIBELED: 7-25-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-1-63. Consent—claimed by Eureka Equity Exchange and denatured.

29326. Wheat. (F.D.C. No. 49053. S. Nos. 33-261 X, 33-702 X.)

QUANTITY: 189,000 lbs. at St. Paul, Minn.

SHIPPED: 7-2-63, from Maddock, N. Dak., by Farmers Union Grain Terminal Association.

LIBELED: 7-23-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-2-63. Consent—claimed by Farmers Union Grain Terminal Association and denatured.

29327. Wheat. (F.D.C. No. 49293. S. No. 34-644 X.)

QUANTITY: 10,000 lbs. in a railroad car at Minneapolis, Minn.

SHIPPED: 8-7-63, from Munster, N. Dak., by Munster Equity Elevator.

RESULTS OF INVESTIGATION: Examination showed that the article contained dockage, straw, chaff, weed seeds, and other foreign material concealed beneath the surface in various sections of the car.

LIBELED: 9-5-63, Dist. Minn.

CHARGE: 402(b)(2)—when shipped, dockage, straw, chaff, weed seeds, and other foreign material had been substituted in whole or in part for wheat; 402(b)(4)—dockage, straw, chaff, weed seeds, and other foreign material had

been added to or mixed or packed with the article so as to increase its bulk or weight.

DISPOSITION: 9-27-63. Consent—claimed by Munster Equity Elevator. Reconditioned and segregated; 970 lbs. of dockage and other foreign material removed.

29328. Wheat. (F.D.C. No. 49401. S. No. 62-562 X.)

QUANTITY: 120,000 lbs. at North Kansas City, Mo.

SHIPPED: 9-16-63, from Atwood, Kans., by Simonds-Shields-Thies Grain Co.

LIBELED: 9-27-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 10-1-63. Consent—claimed by Simonds-Shields-Thies Grain Co., 8,840 lbs. segregated as unfit.

29329. Wheat. (F.D.C. No. 49346. S. No. 68-907 X.)

QUANTITY: 112,500 lbs. at Ft. Worth, Tex.

SHIPPED: 9-3-63, from Eva, Okla., by Elkhart Cooperative Equity Exchange.

LIBELED: 10-3-63, N. Dist. Tex.

CHARGE: 402(a)(3)—contained insect-damaged wheat kernels when shipped.

DISPOSITION: 11-1-63. Consent—claimed by Producers Grain Corp., Amarillo, Tex., and denatured for use as animal feed.

29330. Wheat. (F.D.C. No. 49608. S. No. 103-303 A.)

QUANTITY: 123,000 lbs. in a railway car at Spokane, Wash.

SHIPPED: 1-13-64, from Wolf Point, Mont., by Farmers Union Elevator Co.

RESULTS OF INVESTIGATION: The brake end of the railway car contained a middle layer of rodent-contaminated wheat constituting approximately $\frac{1}{6}$ th of the total wheat in the car.

LIBELED: 1-23-64, E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 1-30-64. Consent—claimed by Cargill, Inc., of Minneapolis, Minn., and denatured for use as animal feed.

29331. Wheat. (F.D.C. No. 49311. S. No. 33-642 X.)

QUANTITY: 120,000 lbs. at Minneapolis, Minn.

SHIPPED: 8-19-63, from Hastings, N. Dak., by Farmers Elevator Co.

LIBELED: 9-11-63, Dist. Minn.

CHARGE: 402(a)(2)(B)—when shipped the article was a raw agricultural commodity and contained a pesticide chemical, namely, a mercurial compound which was unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on wheat has been prescribed by regulations.

DISPOSITION: 9-18-63. Consent—claimed by Farmers Elevator Co. Reconditioned; resulting in destruction of 16,840 lbs.

29332. Barley. (F.D.C. No. 49419. S. No. 33-095 X.)

QUANTITY: 81,980 lbs. at Minneapolis, Minn.

SHIPPED: 9-25-63, from Buffalo, N. Dak., by Peavey Co. Producers Service.

LIBELED: 10-17-63, Dist. Minn.

CHARGE: 402(a)(2)(B)—when shipped, the article was a raw agricultural commodity and contained a pesticide chemical, namely, a mercurial compound, which was unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on barley has been prescribed by regulations.

DISPOSITION: 10-22-63. Consent—claimed by Peavey Co. Producers Service and cleaned; 16,490 lbs. destroyed.

29333. Rice. (F.D.C. No. 49446. S. Nos. 22-951 X, 72-701 X, 72-705 X.)

QUANTITY: 108 cases, each containing 20 3-lb. ctns. of white rice, and 62 cases, each containing 30 12-oz. ctns. of brown rice, at Salt Lake City, Utah, in possession of Cornwall Warehouse Co.

SHIPPED: 6-27-63, from Houston, Tex.

LIBELED: 11-12-63, Dist. Utah.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-6-64. Default—delivered to a public institution for use as animal feed.

29334. Breeding. (F.D.C. No. 49416. S. No. 22-440 X.)

QUANTITY: 12 100-lb. drums and 9 50-lb. drums at Denver, Colo.

SHIPPED: Between 4-18-63 and 6-4-63, from Millstadt, Ill.

LIBELED: 10-22-63, Dist. Colo.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-10-63. Default—delivered to a Government institution for use as animal feed.

29335. Breeding. (F.D.C. No. 49427. S. Nos. 32-861/4 X.)

QUANTITY: 38 100-lb. bags of special breeder, 4 100-lb. bags of special batter mix, 51 100-lb. bags of batter mix, and 49 100-lb. bags of special breeder, at Los Angeles, Calif.

SHIPPED: Between 4-19-63 and 9-10-63, from Millstadt, Ill., and Seattle, Wash.

LIBELED: 10-22-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 11-14-63. Default—destruction.

29336. Breeding. (F.D.C. No. 49415. S. No. 9-628 X.)

QUANTITY: 163 50-lb. drums at Pittsburgh, Pa.

SHIPPED: 7-27-63, from Millstadt, Ill.

LIBELED: 10-16-63, W. Dist. Pa.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 1-21-64. Consent—destruction.

29337. Unpopped popcorn. (F.D.C. No. 49500. S. No. 18-996 X.)

QUANTITY: 23 cases, each containing 24 1-lb. pkgs., and 9 cases, each containing 12 2-lb. pkgs., at Laredo, Tex.

SHIPPED: 8-26-63, from North Bend, Nebr.

LIBELED: 11-6-63, S. Dist. Tex.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-9-63. Default—destruction.

29338. Unpopped popcorn. (F.D.C. No. 49561. S. No. 32-265 X.)

QUANTITY: 400 50-lb. bags, at Los Angeles, Calif., in possession of Pop-Corn Crib, Inc.

SHIPPED: 10-7-63, from North Bend, Nebr.

LIBELED: 12-12-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent excreta pellets, rodent hairs, rodent-gnawed corn, and insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-11-64. Consent—claimed by Pop-Corn Crib, Inc., of Los Angeles, Calif., and converted into animal feed.

DAIRY PRODUCTS

BUTTER

29339. Butter. (F.D.C. No. 47654. S. No. 39-416 X.)

QUANTITY: 15 60-lb. ctns. at New York, N.Y.

SHIPPED: 7-31-63, from Readlyn, Iowa, by Northeast Iowa Cooperative Creameries Association.

LABEL IN PART: (Ctn.) "The Name Tells The Grade CREMOLAND SWEET CREAM BUTTER Sole Distributor Zenith-Godley Company, Inc., New York * * * Better Quality Butter."

RESULTS OF INVESTIGATION: Investigation of the manufacturer of the butter, Tripoli Coop. Creamery Co., Tripoli, Iowa, revealed that the firm was using filthy cream in the churn from which the above butter was taken.

LIBELED: On or about 8-16-63, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained a filthy substance when shipped.

DISPOSITION: 9-24-63. Default—destruction.

29340. Whipped butter. (F.D.C. No. 47645. S. Nos. 30-553/4 V.)

QUANTITY: 83 cases (45 of salted whipped butter and 38 of unsalted whipped butter), each case containing 32 ctns., at Inglewood, Calif.

SHIPPED: 11-17-62, from Chicago, Ill., by National Cheese Co.

LABEL IN PART: (Ctn.) "One Half Lb. Salted [or "SWEET (Unsalted)"] DAISY BRAND Whipped butter * * * 8 Oz. Net Wt. * * * Distr. by Whipped Butter Products, Inc., Inglewood, Calif."

RESULTS OF INVESTIGATION: Analysis showed that the unsalted whipped butter was approximately 2 percent short weight and the salted whipped butter was approximately 2½ percent short weight.

LIBELED: 1-4-63, S. Dist. Calif.; libel amended 2-5-63.

CHARGE: 403(e)(2)—when shipped, the articles failed to bear an accurate statement of the quantity of contents, since the label statement "8 Oz. Net" was inaccurate; 403(a)—the label statement "Less Calories Per Serving" was false and misleading because, when considered in the setting in which presented, it implied that the articles had less calories than butter generally; and 402(a)(3)—the unsalted whipped butter contained a decomposed substance.

DISPOSITION: 3-7-63. Default—the sweet butter ordered destroyed, and the salted butter ordered distributed to a number of charitable and welfare institutions.

CHEESE

29341. Romano cheese. (F.D.C. No. 49223. S. No. 43-473 X.)

QUANTITY: 75 cases, each containing 4 20-lb. loaves, and 311 17-lb. loaves, at Merchantville, N.J.

SHIPPED: 3-1-63 and 3-22-63, from Naples, Italy.

LIBELED: 8-13-63, Dist. N.J.

CHARGE: 402(a) (3)—contained maggots while held for sale.

DISPOSITION: 9-10-63. Consent—claimed by Prince Famous Foods of New Jersey, Inc., Merchantville, N.J., and reconditioned by removal and destruction of the contaminated portion.

MISCELLANEOUS DAIRY PRODUCT

29342. Dried buttermilk. (F.D.C. No. 48332. S. No. 45-409 V.)

QUANTITY: 35 100-lb. bags at Joplin, Mo., in possession of Junge Baking Co., Inc.

SHIPPED: 11-3-61, from Juneau, Wis.

LIBELED: 10-23-62, W. Dist. Mo.

CHARGE: 403(a) (3)—contained insects and insect larvae; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 11-1-62. Consent—destruction.

FEEDS AND GRAINS

29343. Alfalfa hay (2 seizure actions). (F.D.C. Nos. 49294; 49314. S. Nos. 18-565 X; 18-566 X.)

QUANTITY: 200 unlabeled 50-lb. bales, and 250 unlabeled 50-lb. bales, at Crowley, Tex.

SHIPPED: 8-22-63, from Hagerman, N. Mex., by unknown shipper or shippers.

LIBELED: 9-6-63, N. Dist. Tex.

CHARGE: 402(a) (2) (B)—when shipped, the article contained pesticide chemicals, namely, toxaphene and DDT, which were unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemicals on alfalfa hay has been prescribed by regulations.

DISPOSITION: 12-6-63. Default—destruction.

29344. Block salt. (F.D.C. No. 49594. S. Nos. 51-241/4 X.)

QUANTITY: 9 50-lb. sulphurized salt blocks, 198 50-lb. plain salt blocks, 34 50-lb. iodized salt blocks, and 38 50-lb. "trace mineralized" salt blocks, at Wilsall and Livingston, Mont., in possession of Teslow, Inc.

SHIPPED: Between 2-1-63 and 9-17-63, from Salt Lake City, Utah.

RESULTS OF INVESTIGATION: Examination showed that the salt blocks had been contaminated with DDT tracking powder.

LIBELED: 1-13-64, Dist. Mont.

CHARGE: 402(a)(2)(A)—while held for sale, the article bore and contained an added poisonous and deleterious substance, namely, DDT, which was unsafe within the meaning of Section 406 since such substance was not required in the production of the article and could be avoided by good manufacturing practice; and 402(a)(4)—the article had been held under insanitary conditions whereby it may have been rendered injurious to health.

DISPOSITION: 2-24-64. Default—destruction.

FISH AND SHELLFISH

29345. Frozen perch fillets. (F.D.C. No. 49233. S. Nos. 6-402 X, 7-544 X.)

QUANTITY: 1,101 unlabeled 8-lb. boxes at Gloucester, Mass.

SHIPPED: These fillets were from fish caught by the fishing vessel "Admiral" in the waters of the Atlantic Ocean outside the territorial limits of Massachusetts, and unloaded at Gloucester, Mass., on 7-30-63.

LIBELED: 8-19-63, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 10-28-63. Consent—claimed by North Atlantic Fish Co., Inc., of Gloucester, Mass., and reconditioned.

29346. Canned tunafish. (F.D.C. No. 49569. S. No. 59-230 X.)

QUANTITY: 168 cases of 4-lb. 2½-oz. cans at Los Angeles, Calif.

SHIPPED: 6-7-63, from New York, N.Y.

LIBELED: 12-23-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained decomposed fish while held for sale.

DISPOSITION: 3-10-64. Default—destruction.

29347. Breaded shrimp. (F.D.C. No. 49443. S. No. 28-078 X.)

QUANTITY: 661 cases, each containing 24 10-oz. pkgs., at Detroit, Mich.

SHIPPED: 9-30-63 and 10-7-63, from Kansas City, Kans., by Topco Associates, Inc.

LABEL IN PART: (Pkg.) "Dartmouth Frozen Breaded Shrimp Distributed by Dartmouth Marketing Co., Inc., Chicago, Ill."

RESULTS OF INVESTIGATION: Inspection of the manufacturer of the article, Valley Frozen Foods, Port Isabel, Tex., showed that the article had been prepared and packed under insanitary conditions.

LIBELED: 11-13-63, E. Dist. Mich.

CHARGE: 402(a)(3)—contained *E. coli*, excessive coliforms, coagulase positive staphylococci and a high total bacterial count; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-15-64. Default—destruction.

29348. Frozen lobster tails. (F.D.C. No. 45186. S. Nos. 46-514 R, 46-531 R.)

QUANTITY: 863 30-lb. ctns., and 889 ctns., each containing 6 1½-lb. pkgs., at Cleveland, Ohio.

SHIPPED: Between 2-16-60 and 4-12-60, from New York, N.Y.

LIBELED: 12-16-60, N. Dist. Ohio.

CHARGE: 402(a)(3)—contained decomposed lobster tails while held for sale.

DISPOSITION: On 1-3-61, on motion of the United States attorney, an order was filed which permitted the Wouka Distributing Co., Inc., of New York, N.Y., Produce Service, Inc., of Cleveland, Ohio, and the United States Food and Drug Administration to inspect and sample the article. On 3-30-61, pursuant to stipulation, the time for Wouka Distributing Co., Inc., and Produce Service, Inc., to appear, make claim or answer was extended to 5-31-61.

On 4-19-61, Produce Service, Inc., and Skyline Service, Inc., of Cleveland, Ohio, filed a joint claim to the article and admitted that the goods were "decomposed in part." On 5-8-61, on motion of Produce Service, Inc., and Skyline Service, Inc., as claimants, an order was entered pursuant to which Produce Service, Inc., and the United States Food and Drug Administration were permitted to inspect and to segregate and/or sort approximately 1,000 pounds of the article, and the Food and Drug Administration was to supervise the segregation and/or sorting done by Produce Service, Inc., and take such necessary samples of the segregated portions of the article as to determine the effectiveness of the claimants' method and processes of segregation and sorting.

On 5-9-61, the Food and Drug Administration supervised a pilot segregation operation on approximately 1,000 pounds of the article. There were separated out as "reject" approximately 168 pounds of that lot. A representative sample consisting of 200 lobster tails was collected and examined and the segregation procedure was determined to be generally satisfactory.

On 5-26-61, Produce Service, Inc., and Skyline Service, Inc., filed a motion requesting summary judgment, or, in the alternative, an order setting the case for trial in June 1961.

On 5-31-61, Wouka Distributing Co., Inc., filed an answer to the libel in which the firm denied that the article was adulterated, stated that Wouka Distributing Co., Inc., had delivered the article to Produce Service, Inc., on or about 2-16-60 and 4-12-60, stated that since that time Wouka Distributing Co., Inc., had neither possession nor control of the article, stated that Wouka Distributing Co., Inc., was not a party in interest and requested that it be stricken as a party in interest or that, if the court did not grant such relief, it be permitted to defend the action without making claim to the article. On 6-3-61, Wouka Distributing Co., Inc., filed a motion for an order striking Wouka Distributing Co., Inc., as a party in interest *nunc pro tunc* on the ground that it did not have title, possession, or control of the article; the motion requested that Wouka's motion be determined before the motion for summary judgment and further requested that the motion for summary judgment be held in abeyance. On 6-6-61, the Government filed a motion to strike Wouka's pleading of 5-31-61.

On 6-14-61, Produce Service, Inc., amended its claim to the article and stated that Skyline Service, Inc., was the wholly owned subsidiary of Produce Service, Inc., that Wouka Distributing Co., Inc., was the true and lawful owner of the article, that Produce Service, Inc., claimed the article as bailee for Wouka, that the article was in part adulterated, and that the claimant was prepared to abide by and carry out any order of the court pertaining to condemnation, release and/or disposition of the article. On 6-19-61, the Government filed a motion requesting that the Government's previous motion to strike be amended to request that all pleading filed by Wouka subsequent to its answer also be stricken.

On 8-8-61, the court granted the Government's motion to strike the pleadings of Wouka Distributing Co., Inc. On 8-31-61, upon the motion for sum-

mary judgment of Produce Service, Inc., the court condemned the article as adulterated while held for sale after shipment in interstate commerce, and ordered the destruction of the article, excepting, however, any of the article released under bond to be brought into compliance with the law by the claimant. On 9-12-61, an order was filed authorizing the segregation and sorting of the article. On 12-22-61, the segregation operations were completed resulting in the destruction of approximately 5,700 pounds of the article.

FRUITS AND VEGETABLES

CANNED FRUIT

29349. Canned peaches. (F.D.C. No. 49411. S. No. 11-196 X.)

QUANTITY: 897 cases, each containing 24 1-lb. 13-oz. cans, at Blairsville, Pa.

SHIPPED: 7-30-63, from Easley, S.C., by Jones Canning Co.

LABEL IN PART: (Can) "Hilltop Yellow Freestone Peaches Halves in Heavy Syrup * * * Packed in U.S.A. by Jones Canning Company, Easley, S.C."

LIBELED: 10-14-63, W. Dist. Pa.

CHARGE: 402(a)(3)—contained *Drosophila* flies; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 11-29-63. Default—destruction.

29350. Canned plums. (F.D.C. No. 49473. S. No. 33-136 X.)

QUANTITY: 746 cases, each containing 24 1-lb. 13-oz. cans, at Minneapolis, Minn.

SHIPPED: 8-24-63, from San Francisco, Calif., by A. M. Beebe Co.

LABEL IN PART: (Can) "Ranch House Brand Home Style Whole California Red Plums Certified Coloring Added Packed in Heavy Syrup * * * Packed by Old Ranchers Company, Upland, Calif."

LIBELED: 10-16-63, Dist. Minn.

CHARGE: 402(a)(3)—when shipped, the article contained *Drosophila* flies, maggots, and decomposed fruit; and 403(g)(1)—the article purported to be and was represented as canned plums and it failed to conform to the definition and standard of identity prescribed by regulations since it contained artificial color which was not permitted as an ingredient of canned plums.

DISPOSITION: 2-10-64. Default—ordered destroyed or denatured for use as animal feed.

29351. Canned plums. (F.D.C. No. 49420. S. No. 79-614 X.)

QUANTITY: 1,200 cases, each containing 24 1-lb. 13-oz. cans, at Fort Wayne, Ind.

SHIPPED: 8-21-63, from San Francisco, Calif., by Mel-Williams Co.

LABEL IN PART: (Can) "Ranch House Brand El Dorado Home Style Whole California Red Plums Packed In Heavy Syrup * * * Packed By Old Ranchers Company, Upland, Calif."

LIBELED: 10-16-62, N. Dist. Ind.; libel amended 10-30-63.

CHARGE: 402(a)(3)—contained decomposed fruit when shipped.

DISPOSITION: 2-14-64. Default—destruction.

29352. Canned plums. (F.D.C. No. 49439. S. No. 63-796 X.)

QUANTITY: 192 cans, each containing 24 1-lb. 13-oz. cans, at Fargo, N. Dak.

SHIPPED: 8-27-63, from Hollister, Calif., by Hollister Canning Co.

LABEL IN PART: (Can) "Ranch House Brand * * * Home Style Whole California Red Plums * * * Packed In Heavy Syrup * * * Packed By Old Ranchers Company, Upland, Calif."

LIBELED: 11-6-63, Dist. N. Dak.

CHARGE: 402(a)(3)—contained insect eggs and rot when shipped.

DISPOSITION: 2-14-64. Default—destruction.

29353. Canned plums. (F.D.C. No. 49507. S. No. 33-499 X.)

QUANTITY: 358 cases, each containing 24 1-lb. 13-oz. cans, at St. Paul, Minn.

SHIPPED: 8-27-63, from Upland, Calif., by Old Ranchers Canning Co., Inc.

LABEL IN PART: (Can) "Ranch House Brand Home Style Whole California Red Plums Certified Coloring Added Packed in Heavy Syrup * * * Packed by Old Ranchers Company, Upland, Calif."

LIBELED: 11-7-63, Dist. Minn.

CHARGE: 402(a)(3)—when shipped, the article contained insect larvae, insect eggs and rot; and 403(g)(1)—the article purported to be and was represented as canned plums and it failed to conform to the definition and standard of identity prescribed by regulations since it contained artificial color which was not permitted as an ingredient of canned plums.

DISPOSITION: 2-10-64. Default—destruction.

29354. Canned plums. (F.D.C. No. 49433. S. No. 62-760 X.)

QUANTITY: 105 cases, each containing 24 1-lb. 13-oz. cans, at McCook, Nebr.

SHIPPED: 9-7-63, from San Francisco, Calif., by Mel-Williams Co.

LABEL IN PART: (Can) "Ranch House Brand El Dorado Home Style California Red Plums * * * Packed by Old Ranchers Company, Upland, Calif."

LIBELED: On or about 11-6-63, Dist. Nebr.

CHARGE: 402(a)(3)—contained decomposed fruit when shipped.

DISPOSITION: 2-20-64. Default—destruction.

MISCELLANEOUS FRUIT PRODUCTS

29355. Apple cider. (F.D.C. No. 49495. S. No. 13-586 X.)

QUANTITY: 228 cases, each containing 4 1-gal. btls., at Franklin Park, Ill.

SHIPPED: 10-15-63, from Coloma, Mich., by M. Steffen & Co., Inc.

LABEL IN PART: (Btl.) "Paw Paw Sweet Apple Cider * * * Mfd. by M. Steffen & Co., Inc. Coloma, Mich."

LIBELED: 10-31-63, N. Dist. Ill.

CHARGE: 402(a)(3)—contained *Drosophila* flies; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 12-2-63. Default—destruction.

29356. Imitation dehydrated lemon juice. (F.D.C. No. 48390. S. No. 6-088 V.)

QUANTITY: 10 cases, each containing 24 1-lb. bags, at Pawtucket, R.I.

SHIPPED: 9-17-62, from Boston, Mass., by Christie Food Products, Inc.

LABEL IN PART: (Bag) "Christie's INSTANT-CHEF Powdered LEMON BASE Contains Egg Whites No Preservatives Just Add Water * * * Use Chris-

tie's Lemon Base to obtain the same results as you would from freshly squeezed lemon juice * * * to be used in place of freshly squeezed lemon juice * * * made with dehydrated lemon juice, corn syrup solids, citric acid, sucrose, dextrose, dehydrated egg whites, ascorbic acid (vitamin C) and U.S. certified food color. Mfg. by Christie Food Products, Inc., Boston, Mass."

RESULTS OF INVESTIGATION: Examination showed the article to be a pale yellow, coarse, moist-looking powder. When diluted in water according to directions on the label, the lemon juice content did not exceed 20 percent.

LIBELED: 11-28-62, Dist. R.I.

CHARGE: 403(a)—when shipped, the name "Lemon Base" and the label statements which represented and suggested that the article, when dissolved in water made full strength freshly squeezed lemon juice or the equivalent thereof, were false and misleading since they were contrary to fact; and 403(c)—the article was an imitation of another food, namely, dehydrated lemon juice, and its label failed to bear the word "imitation" and immediately thereafter the name of the food imitated.

DISPOSITION: On 12-1-62, Christie Food Products, Inc., claimed the article and filed an answer denying that the article was misbranded. On 6-10-63, the Government served interrogatories on the claimant. On 10-14-63, a consent decree of condemnation was filed which provided for distribution of the article to charitable institutions.

29357. Glaced fruit. (F.D.C. No. 45856. S. Nos. 97-282/3 R.)

QUANTITY: 45 cases, each containing 12 pkgs., and 42 cases, each containing 24 pkgs., at Utica, N.Y.

SHIPPED: Between 10-18-60 and 12-2-60, from Salem, Mass., by Snow Crest Beverages, Inc.

LABEL IN PART: (Pkg. lid) "Snow Crest Net Wt 16 ozs. [or "8 ozs."] Fruits and Peels * * * Contains * * * Mfd. by Food Division, Snow Crest Beverages, Inc., Salem, Mass."

RESULTS OF INVESTIGATION: Examination showed that the article was short weight.

LIBELED: 7-3-61, N. Dist. N.Y.

CHARGE: 403(e) (2)—when shipped, the label of the article failed to bear an accurate statement of the quantity of contents.

DISPOSITION: 12-9-63. Default—destruction.

29358. Peach concentrate. (F.D.C. No. 49365. S. No. 41-341 X.)

QUANTITY: 3,425 No. 12 cans at Jersey City, N.J.

SHIPPED: 8-2-63, from San Francisco, Calif.

LIBELED: 10-2-63, Dist. N.J.

CHARGE: 402(a) (3)—consisted in whole or in part of a decomposed substance while held for sale.

DISPOSITION: 11-21-63. Consent—claimed by Mel-Williams Co., San Francisco, Calif. Segregated; 971 cans destroyed.

MARMALADE AND PRESERVES

29359. Marmalade and preserves. (F.D.C. No. 48944. S. Nos. 67-018/20 V.)

QUANTITY: 32 cases, each containing 24 1-lb. jars of orange-cherry marmalade; 39 cases, each containing 24 1-lb. jars of pineapple-cherry preserves; and 97 cases, each containing 24 1-lb. jars of grapefruit-cherry marmalade; at Eastman, Ga.

SHIPPED: 2-21-63, from Miami, Fla., by Sunaid Food Products, Inc.

LABEL IN PART: (Jar) "Stuckey's Orange-Cherry Marmalade [or "Pineapple-Cherry Preserves," or "Grapefruit-Cherry Marmalade"] * * * Ingredients * * * Packed for Stuckey's Eastman, Ga."

RESULTS OF INVESTIGATION: Examination showed that the articles contained an undeclared coal-tar color, and that the label statements of ingredients had been printed in very small type.

LIBELED: 5-6-63, S. Dist. Ga.

CHARGE: 403(f)—when the marmalade (both lots) was shipped, the information required to appear on the labels under 403(i) (2), namely, the statement of ingredients, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling), as to render it likely to be read by the ordinary individual under customary conditions of purchase and use; 403(g) (1)—the pineapple-cherry preserves failed to conform to the definition and standard of identity prescribed for pineapple-cherry preserves, in that it contained a coal-tar color which was not permitted as an ingredient of pineapple-cherry preserves in such definition and standard; and 403(k)—all articles contained an artificial coloring and they failed to bear labels stating that fact.

DISPOSITION: On or about 7-8-63, Stuckey's, Inc., claimed the articles and denied that the articles were misbranded. On 1-10-64, the claimant having stipulated that due to the expense involved no effort would be made to relabel the articles and that, while not conceding any intent to violate any applicable statute in connection with placing the articles on the market, the claimant did not desire to prosecute its claim and answer further, a consent decree of condemnation providing for the delivery of the articles to a charitable institution was filed.

VEGETABLES AND VEGETABLE PRODUCTS*

29360. Frozen broccoli. (F.D.C. No. 49515. S. No. 65-211 X.)

QUANTITY: 94 cases, each containing 12 2½-lb. pkgs., at Asheville, N. C.

SHIPPED: 10-22-63, from Watsonville, Calif., by Watsonville Canning Co.

LABEL IN PART: (Pkg.) "Ed-Co * * * Broccoli Spears * * * Distributed by Watsonville Canning Co. Watsonville, Calif."

LIBELED: 11-11-63, W. Dist. N. C.

CHARGE: 402(a) (2) (C)—when shipped, the articles contained endrin, a food additive which was unsafe within the meaning of 409, since it and its use or intended use were not in conformity with a regulation or exemption.

DISPOSITION: 11-27-63. Default—destruction.

29361. Frozen broccoli. (F.D.C. No. 49729. S. No. 53-824 X.)

*See also No. 29390.

QUANTITY: 23 cases, each containing 24 10-oz. pkgs., at Arlington, Wash.

SHIPPED: 10-23-63, from Watsonville, Calif., by Rich Plan Corp.

LABEL IN PART: (Pkg.) "Rich Plan * * * Broccoli Spears * * * Distributed by Rich Plan Corporation General Offices Dallas, Texas."

LIBELED: On or about 1-17-64, W. Dist. Wash.

CHARGE: 402(a)(2)(C)—when shipped, the article contained endrin, a food additive, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption.

DISPOSITION: 2-26-64. Default—destruction.

29362. Fresh cauliflower. (F.D.C. No. 49489. S. No. 77-721 X.)

QUANTITY: 120 crates, each containing approximately 12 heads, at Jacksonville, Fla.

SHIPPED: 10-15-63, from Riverhead, N.Y., by The Great Atlantic & Pacific Tea Company, National Produce Div.

LABEL IN PART: (Crate) "Long Island * * * 112A."

LIBELED: 10-30-63, M. Dist. Fla.

CHARGE: 402(a)(2)(B)—when shipped, the article was a raw agricultural commodity, and it contained a pesticide chemical, namely, endrin, which was unsafe within the meaning of 408(a), since no tolerance or exemption for such pesticide chemical on the article had been prescribed by regulations.

DISPOSITION: 11-26-63. Default—destruction.

29363. Dried lima beans. (F.D.C. No. 49511. S. No. 2-088 X.)

QUANTITY: 10 100-lb. bags at Savannah, Ga.

SHIPPED: 10-1-63, from Oxnard, Calif.

LIBELED: 11-12-63, S. Dist. Ga.

CHARGE: 402(a)(3)—contained rodent urine while held for sale.

DISPOSITION: 12-6-63. Default—destruction.

29364. Dried pinto beans. (F.D.C. No. 49513. S. No. 68-824 X.)

QUANTITY: 413 100-lb. bags, at Donna, Tex., in possession of Groce-Weardon Co.

SHIPPED: 9-26-63, from Greeley, Colo.

LIBELED: 11-18-63, S. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-9-63. Consent—claimed by Groce-Weardon Co. Segregated; 1,900 lbs. destroyed.

29365. Dried pinto beans and dried lima beans. (F.D.C. No. 49309. S. Nos. 15-269/70 X.)

QUANTITY: 73 100-lb. bags of pinto beans and 10 100-lb. bags of lima beans at Nashville, Tenn., in possession of C. B. Ragland Co., Inc.

SHIPPED: 12-26-62, from Mineola, Tex.

LIBELED: 9-11-63, M. Dist. Tenn.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-19-63. Consent—claimed by C. B. Ragland Co., of Nashville, Tenn., for conversion into animal feed.

29366. Dried cowpeas. (F.D.C. No. 49611. S. No. 54-617 X.)

QUANTITY: 80 100-lb. bags, at Hohenwald, Tenn., in possession of Old Black Joe Co.

SHIPPED: 11-23-63, from Ochlochnee, Ga.

LIBELED: 1-24-64, M. Dist. Tenn.

CHARGE: 402(a)(3)—contained rodent urine while held for sale.

DISPOSITION: 3-25-64. Default—delivered to a Government institution for use as animal feed.

29367. Green peas. (F.D.C. No. 49444. S. No. 30-475 X.)

QUANTITY: 57 100-lb. bags at La Puente, Calif., in possession of the Santa Maria Packing Co.

SHIPPED: 8-15-63, from Moscow, Idaho.

LIBELED: 11-7-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-29-64. Default—destruction.

29368. Canned field peas. (F.D.C. No. 49115. S. No. 1-615 X.)

QUANTITY: 950 cases, each containing 24 No. 303 cans, at Seagrove, N.C., in possession of Luck's, Inc.

SHIPPED: The article was prepared from dried peas which had been shipped on 2-20-63, from Gilbert, S.C.

RESULTS OF INVESTIGATION: Investigation revealed that the dried peas had been held under insanitary conditions in the canner's plant before being canned.

LIBELED: 7-16-63, M. Dist. N.C.; amended libel 8-13-63.

CHARGE: 402(a)(4)—held under insanitary conditions.

DISPOSITION: The article was claimed by Luck's, Inc., and the matter came to trial on 10-28-63. At the conclusion of the trial, the case was taken under advisement by the court and time was granted in which each side could present briefs. Thereafter, the claimant consenting, a decree of condemnation and destruction was entered on 11-29-63.

29369. Canned black-eyed peas. (F.D.C. No. 49777. S. No. 162 A.)

QUANTITY: 78 cases, containing 24 cans each, at Hendersonville, N.C.

SHIPPED: 12-28-63, from Hohenwald, Tenn., by Old Black Joe Co.

LABEL IN PART: (Can) "Old Black Joe * * * Prepared from Dry Black Eyed Peas Net Weight 1 lb. 4 Ozs. * * * Packed by Old Black Joe Co., Hohenwald, Tenn."

LIBELED: 2-7-64, W. Dist. N.C.

CHARGE: 402(a)(3)—contained insects when shipped.

DISPOSITION: 3-6-64. Default—delivered to a public institution for use as animal feed.

29370. Canned mushrooms and canned mushroom chop suey vegetables. (F.D.C. No. 49496. S. Nos. 31-710/13 X.)

QUANTITY: 85 cases, each containing 24 1-lb. cans of mushroom chop suey vegetables; 408 cases, each containing 24 2-oz. cans of sliced button mushrooms; 116 cases, each containing 12 8-oz. cans of stems and pieces of mushrooms; and 106 cases, each containing 12 8-oz. cans of whole mushrooms, at Phoenix, Ariz.

SHIPPED: Between 3-7-63 and 9-17-63, from Chicago, Ill., and West Chester, Pa., by Min-Sun Trading Co., and Brandywine Mushroom Corp.

LABEL IN PART: (Cans) "Chinese Maid * * * Mushroom Chop Suey Vegetables * * * Packed by Min-Sun Trading Co., Chicago, Ill."; "Brandywine Sliced Button" [or "Stems and Pieces," or "Whole Button"] Mushrooms Brandywine Mushroom Corp. West Chester, Pa."

RESULTS OF INVESTIGATION: Examination showed that the articles (all lots) were undergoing decomposition.

LIBELED: 10-31-63, Dist. Ariz.

CHARGE: 402(a)(3)—contained decomposed food when shipped.

DISPOSITION: 12-12-63. Default—destruction.

29371. Canned mushrooms. (F.D.C. No. 49633. S. No. 54-116 X.)

QUANTITY: 39 cases, each containing 24 unlabeled 16-oz. cans, at East Vineland, N.J., in possession of La Primadora Food Products, Inc.

SHIPPED: Between 1-1-63 and 3-31-63, from Kennett Square, Pa.

RESULTS OF INVESTIGATION: The raw mushrooms in bulk lots, shipped as above, had been prepared, processed, and packed into cans by the dealer. Investigation indicated that faulty procedure in the canning process caused the mushrooms to start decomposing.

LIBELED: On or about 12-4-63, Dist. N.J.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 1-28-64. Default—destruction.

29372. Hot green chili relish. (F.D.C. No. 49351. S. No. 51-811 X.)

QUANTITY: 20 cases, each containing 12 8-oz. jars, at Seattle, Wash.

SHIPPED: 5-16-63 and 6-5-63, from Rosemead, Calif., by La Victoria Foods, Inc.

LABEL IN PART: (Jar) "Salsa Jalapena Hot Green Chili Relish * * * La Victoria Foods, Inc., Rosemead, Calif."

LIBELED: On or about 9-23-63, W. Dist. Wash.

CHARGE: 402(a)(3)—contained insects and/or insect parts; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 10-23-63. Default—destruction.

29373. Sweet pickle chips. (F.D.C. No. 49429. S. No. 19-415 X.)

QUANTITY: 20 cases, each containing 12 32-oz. jars, at Oklahoma City, Okla.

SHIPPED: Prior to 10-5-63, from Fort Worth, Tex., by Mrs. Dalton's Best Maid Products, Inc.

LABEL IN PART: (Jar) "Best Maid Fancy Sweet Chips * * * Packed by Mrs. Dalton's Best Maid Products Inc., Ft. Worth, Texas."

LIBELED: 11-7-63, W. Dist. Okla.

CHARGE: 402(a)(3)—contained insects and insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 12-12-63. Default—destruction.

29374. Cucumber pickles and pickled peppers. (F.D.C. No. 47116. S. Nos. 38-076 R, 69-775 R, 80-168/70 R.)

INFORMATION FILED: 6-29-62, E. Dist. Pa., against Walter C. Becker, t/a Walbeck Foods, Kennett Square, Pa.

ALLEGED VIOLATIONS: Between 12-28-60 and 2-10-61, the defendant caused to be given to a firm engaged in the business of shipping pickle products in interstate commerce, two invoices containing guarantees to the effect that the pickled peppers described in the invoices and shipped by the defendant were not adulterated or misbranded, which guarantees were false since the pickled peppers were adulterated.

In addition on 5-9-61, the defendant shipped from Kennett Square, Pa., to Kearny, N.J., a quantity of adulterated pickled peppers, and quantities of misbranded sweet cucumber pickles.

LABEL IN PART: (Jars) "Acme Ideal Pickles HOT PEPPERS Contains: Peppers, Salt, Vinegar, Spices Distributed by: American Stores Co., Philadelphia, Pa. 1 fluid pint"; and "Acme Ideal Pickles FRESH CUCUMBER SWEET Contains: Cucumbers, Sugar, Vinegar, Salt, Spices, Onions, Alum, Turmeric Distributed by: American Stores Co., Philadelphia, Pa. 15 fluid ounces [or "1 pint 12 fl. ounces"]."

CHARGE: 402(a)(3)—the pickled peppers contained maggots, mites, thrips, insects, insect parts, fly eggs, corn borer larvae parts, and cat hair; and 403(k)—the sweet cucumber pickles contained a chemical preservative, benzoate of soda, and failed to bear labeling stating such fact.

PLEA: Guilty.

DISPOSITION: 1-3-63. \$1,000 fine.

TOMATOES AND TOMATO PRODUCTS

29375. Canned tomatoes. (F.D.C. No. 49128. S. Nos. 42-622/4 X.)

QUANTITY: 1,001 cases, each containing 6 No. 10 cans, at Philadelphia, Pa.

SHIPPED: Between 3-21-63 and 5-23-63, from Cherry Hill, N.J., by Eastern Cannery.

LABEL IN PART: (Case) "Ex. Std. Tomatoes."

LIBELED: 7-25-63, E. Dist. Pa.

CHARGE: 403(h)(1)—when shipped, the article fell below the standard of quality for canned tomatoes, since the article contained tomato peel, per pound of canned tomatoes in the container, which covered an area of more than 1 square inch and its label failed to bear a statement that it fell below such standard.

DISPOSITION: 8-16-63. Consent—claimed by Ridge Canning Co., Inc., Glassboro, N.J., and released under bond for relabeling.

29376. Canned tomatoes. (F.D.C. No. 49374. S. No. 5-513 X.)

QUANTITY: 1,996 cases, each containing 24 1-lb. cans, at Bangor, Maine.

SHIPPED: 9-6-63, from Cambridge, Md., by Albert W. Sisk & Son.

LABEL IN PART: (Can) "Pine Cone Brand Peeled Tomatoes * * * Albert W. Sisk and Son Distributors * * * Main office Preston, Md."

LIBELED: 10-1-63, Dist. Maine.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs, maggots, and other insects; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 11-27-63. Consent—destruction.

29377. Canned tomatoes. (F.D.C. No. 49410. S. No. 54-282 X.)

QUANTITY: 316 cases, each containing 24 1-lb. 12-oz. cans, at Scranton, Pa.

SHIPPED: 8-29-63, from Princess Anne, Md., by A. W. Sisk & Son.

LABEL IN PART: (Can) "Elmdale Tomatoes Distributed by Eastern Retailer-Owned Grocers Cooperative, Inc., New York, N.Y."

LIBELED: 10-11-63, M. Dist. Pa.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 3-10-64. Default—destruction.

29378. Tomato juice. (F.D.C. No. 49719. S. No. 79-687 X.)

QUANTITY: 124 cases, 24 cans each, at Grand Rapids, Mich.

SHIPPED: During the month of September or October 1963, from Indiana.

LIBELED: 1-13-64, W. Dist. Mich.

CHARGE: 402(a)(3)—contained decomposed tomato material while held for sale.

DISPOSITION: 2-6-64. Consent—destruction.

29379. Canned pizza sauce (tomato product). (F.D.C. No. 49131. S. Nos. 39-789 V, 40-215 V.)

INFORMATION FILED: 9-27-63, Dist. N.J., against La Primadora Food Products, Inc., Vineland, N.J., and Anna Sorrentino, president, and Archimede Sorrentino, manager of the corporation.

SHIPPED: 9-16-62 and 9-21-62, from New Jersey to New York.

LABEL IN PART: "La Primadora Brand Extra Heavy Pizza Sauce California Style Packed by La Primadora Food Products, Inc., Vineland, New Jersey," and "La Parisina Brand * * * Italian Style Pizza Sauce Distributors Parisi Bros., Inc., Mt. Vernon, N.Y."

CHARGE: 402(a)(3)—contained flies, fly eggs, and maggots; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 3-6-64. Corporation—\$400 fine; individuals—probation for 3 years.

NUTS AND NUT PRODUCTS

29380. Shelled brazil nuts. (F.D.C. No. 49249. S. Nos. 2-279/82 X.)

QUANTITY: 140 unlabeled 30-lb. cans, packed two cans to a case, at Atlanta, Ga.

SHIPPED: 7-5-63 and 7-25-63, from New York, N.Y., by J. F. Braun & Sons.

LABEL IN PART: (Case) "S.E.P. * * * Manaus Brazo; * * * Servico do Acordo * * * M.A. Amazonas Brazil * * * Usina Alegria * * * Tipo."

LIBELED: 9-9-63, N. Dist. Ga.

CHARGE: 402(a)(3)—contained insects, insect larvae, and insect webbing when shipped.

DISPOSITION: 11-29-63. Consent—claimed by J. F. Braun & Sons. Reconditioned and segregated; 145 lbs. denatured.

29381. Shelled peanuts. (F.D.C. No. 49327. S. Nos. 37-925/6 X.)

QUANTITY: 1,120 124-lb. bags, at Montgomery, Ala., in possession of Atlantic Co.

SHIPPED: 9-13-62 and 5-14-63, from Graceville, Fla.

LIBELED: 9-26-63, M. Dist. Ala.

CHARGE: 402(a)(3)—contained rodent urine and rodent excreta pellets; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-11-63. Consent—claimed by Atlantic Co. Segregated; 1,330 lbs. denatured for use as animal feed.

29382. Shelled Spanish peanuts. (F.D.C. No. 49322. S. No. 20-532 X.)

QUANTITY: 165 120-lb. bags, at Denison, Tex., in possession of Denison Peanut Co.

SHIPPED: 9-5-63, from Oklahoma City, Okla. This was a return shipment.

LIBELED: 9-18-63, E. Dist. Tex.

CHARGE: 402(a)(3)—when shipped and while held for sale, the article contained insects, insect parts, and insect larvae; and 402(a)(4)—prepared and packed under insanitary conditions at Denison, Tex.

DISPOSITION: 11-4-63. Consent—claimed by Denison Peanut Co., of Denison, Tex. Reconditioned and segregated; 420 lbs. converted into animal feed.

29383. Shelled Spanish peanuts. (F.D.C. No. 49573. S. No. 32-634 X.)

QUANTITY: 23 120-lb. bags at Whittier, Calif., in possession of Shoemaker's Candies.

SHIPPED: Between 10-23-63 and 10-31-63, from Suffolk, Va., and Fredericksburg, Tex.

LIBELED: 12-26-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 3-5-64. Default—destruction.

29384. Shelled Spanish peanuts. (F.D.C. No. 49774. S. No. 24-151 A.)

QUANTITY: 240 100-lb. bags, at Chicago, Ill.

SHIPPED: 1-2-64, from Giddings, Tex., by Lee County Peanut Co.

LABEL IN PART: (Bag) "Spanish Number One Shelled Peanuts * * * Lee County Peanut Co. Giddings, Texas."

LIBELED: 2-10-64, N. Dist. Ill.

CHARGE: 402(a)(3)—contained rodent excreta pellets and rodent hairs; and 402(a)(4)—prepared, packed and held under insanitary conditions.

DISPOSITION: 3-13-64. Consent—claimed by Dorman Sell, t/a Lee County Peanut Co., and denatured for use as seed stock.

29385. Peanut butter. (F.D.C. No. 49651. S. No. 41-599 X.)

QUANTITY: 72 cases, 24 jars each, at New York, N.Y.

SHIPPED: 10-16-63, from Philadelphia, Pa., by Lummis & Co., Div. of U.S. Tobacco Co.

LABEL IN PART: (Jar) "Grisdale Brand * * * Homogenized Peanut Butter * * * Contents 12 Oz. Net Wt. Distributed by Gristede Bros., Inc. New York, N.Y."

LIBELED: On or about 12-16-63, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 2-7-64. Default—destruction.

29386. Pecan meal. (F.D.C. No. 48904. S. Nos. 13-442/43 V.)

INFORMATION FILED: 8-8-63, W. Dist. Tex., against Ramo, Inc., t/a Sunshine Pecan Co., San Antonio, Tex., William B. Martin, Jr., plant manager, and Robert O. Baker, plant superintendent.

SHIPPED: Between 12-14-62 and 1-7-63, from San Antonio, Tex., to Chicago, Ill.

LABEL IN PART: (Ctns.) "Contents Pecan Meal From Sunshine Pecan Co. * * * San Antonio 7, Texas."

CHARGE: 402(a)(3)—contained *E. coli* (a micro-organism indicative of fecal contamination), insects, and insect parts; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 1-24-64. Ramo, Inc.,—\$500 fine; Martin—\$500 fine; Baker—\$250 fine.

OILS AND FATS*

29387. Crude cottonseed oil. (F.D.C. No. 48925. S. No. 2-336 T.)

INFORMATION FILED: 8-7-63, W. Dist. S.C., against Victor Cotton Oil Co., a partnership, Gaffney, S.C., and J. Leslie McCulloch, general manager.

SHIPPED: 11-3-61, from South Carolina to North Carolina.

CHARGE: 402(a)(4)—prepared under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-9-63. Each defendant fined \$250.

29388. Crude cottonseed oil. (F.D.C. No. 48866. S. Nos. 421 V., 2-234/5 V.)

INFORMATION FILED: 5-31-63, W. Dist. S.C., against Pendleton Oil Mill, Inc., Pendleton, S.C., and Augustus J. Sitton, president.

SHIPPED: Between 10-8-62 and 11-12-62, from South Carolina to North Carolina.

CHARGE: 402(a)(4)—prepared under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 11-18-63. Each defendant fined \$300.

*See also No. 29301.

29389. Cooking oils. (F.D.C. No. 48752. S. Nos. 12-185/6 V.)

QUANTITY: 19 individually cased 5-gal. cans labeled "Peanut Oil," and 22 individually cased 5-gal. cans labeled "Corn Oil," at Milwaukee, Wis.

SHIPPED: 2-18-63, from Chicago, Ill., by Columbus Foods Co.

LABEL IN PART: (Case "Pieper's Gargoyle Pure Peanut Oil [or "Corn Oil"]
* * * Exclusive Distributors O. R. Pieper's Co. Milwaukee, Wisconsin.")

RESULTS OF INVESTIGATION: Examination showed that the cooking oils consisted principally of cottonseed oil and contained little or no peanut oil or corn oil.

LIBELED: 4-19-63, E. Dist. Wis.

CHARGE: 402(b)(2)—when shipped, cottonseed oil had been substituted in whole or in part for peanut oil and/or corn oil; and 403(a)—the label statements "Peanut Oil" and "Corn Oil" were false and misleading as applied to products consisting in whole or in part of cottonseed oil.

DISPOSITION: 2-14-64. Default—ordered delivered to a charitable institution.

SPICES, FLAVORS, AND SEASONING MATERIALS

29390. Stick cinnamon and dried pinto beans. (F.D.C. No. 49768. S. Nos. 40-054/7 A.)

QUANTITY: 2 100-lb. bales and 3 100-lb. bags of stick cinnamon, and 21 100-lb. bags of pinto beans, at Laredo, Tex., in possession of Julian M. Trevino, Inc.

SHIPPED: Between 3-11-63 and 11-4-63, from Ceylon and Greeley, Colo.

LIBELED: 2-10-64, S. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent excreta pellets and rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 3-18-64. Default—destruction.

29391. Turmeric, whole and ground. (F.D.C. No. 49275. S. No. 38-401 X.)

QUANTITY: 72 140-lb. bags of tumeric roots and 5 unlabeled 250-lb. drums of ground turmeric at New Orleans, La., in possession of Baumer Foods, Inc.

SHIPPED: (Bags) 6-13-63, from New York, N.Y.

RESULTS OF INVESTIGATION: The dealer had ground and packed into drums turmeric root which he had received in bags.

LIBELED: 8-22-63, E. Dist. La.

CHARGE: 402(a)(3)—while held for sale, the ground turmeric contained insects, and the whole turmeric root contained live insects, insect larvae, and insect pupae.

DISPOSITION: 2-25-64. Default—destruction.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE

29392. Vitamin D milk enrichment product. (F.D.C. No. 47104. S. Nos. 12-982 R, 51-599 R, 52-430 R.)

INFORMATION FILED: 8-7-62, W. Dist. Mo., against Food Products Laboratories, Inc., Kansas City, Mo., and Henry J. Johnson, president.

SHIPPED: Between 8-8-60 and 1-23-61, from Kansas City, Mo., to Chicago, Ill., Minneapolis, Minn., and Denver, Colo.

LABEL IN PART: (Ctn.) "100 Wafers—160 Million U.S.P. Units Vitamin D Vitamin D. Wafers A superior concentrated Milk Enrichment Product Stable Long Shelf Life Manufactured By Food Products Laboratories, Inc., Kansas City 8, Missouri."

CHARGE: 402(b)(2)—when shipped, an unstable preparation of vitamin D had been substituted for a stable preparation of vitamin D, which the article purported and was represented to be; and 403(a)—the label of the article bore false and misleading representations that the article was a stable preparation of vitamin D and that it was not subject to deterioration during a long shelf life.

PLEA: Not guilty.

DISPOSITION: On 8-9-63, the parties having agreed that the case might best be handled by stipulations, the Government and the defendants filed various stipulations with respect to the testimony of witnesses, documents and exhibits. On or about 8-22-63, the Government filed objections to the stipulated evidence of the defendants; and on 8-28-63, the defendants filed objections to the stipulated evidence of the Government. On 9-3-63, the defendants filed a motion for discovery and inspection of the Government samples of the article and motions for a judgment of acquittal of each of the defendants.

On 12-19-63, the court filed the following memorandum opinion, findings of fact, and conclusions of law:

OLIVER, *District Judge*: "This criminal action, involving an information in six counts, is a prosecution under the provisions of the Federal Food, Drug, and Cosmetic Act, 21 United States Code, § 301 et seq.

"Three counts charge the introduction into interstate commerce of a food, a vitamin enrichment wafer, which allegedly was adulterated, within the meaning of § 342(b)(2) of Title 21, United States Code, in that an unstable vitamin D product had been substituted for a stable vitamin D product, (Counts I, III and V).

"In the other three counts, defendants are charged with the introduction into interstate commerce of the same food which was allegedly misbranded within the meaning of § 343(a) of Title 21, United States Code, in that the label for the product asserted that it was stable and had a 'long shelf life,' whereas in fact the product was not stable and did not have a 'long shelf life.'

"The case is before us on the full stipulation of the parties. Defendants filed a motion for discovery and inspection in which it complained that the United States Attorney had not placed the official samples before the Court, but, on inquiry, we found that the United States Attorney was merely keeping those samples in his office because of the inconvenience of filing the bulky packages in the Clerk's office. At any rate, we have viewed those samples and have considered them as part of the evidence in this case.

"Counts I and II involve a particular shipment of the vitamin D enrichment wafers to Chicago, Illinois; Counts III and IV, another particular shipment to Minneapolis, Minnesota; and Counts V and VI, still another particular shipment to Denver, Colorado. It is these shipments that are involved in this case. Whether other wafers, manufactured and tested at different times, were or were not stable is irrelevant to this case. This case involves the stability of the wafers in the three particular shipments that are involved in this action. See *United States v. 5 cases . . . Figlia Mia Brand*, 2nd Cir. 1950, 179 F. 2d 519, cert. denied 339 U.S. 963.

"The bulk of defendants' stipulation and argument relate to tests in regard to wafers other than those involved in this action. What the facts may be concerning those may not be considered as a defense in this case.

"Under our view of both the law and the facts, we deem it necessary to determine the stability of the product involved in this action from the tests

involving those products. We have determined the absence of stability stated in our formal findings on that basis.

"Defendants' request that we take judicial notice of the fact that the words on the label 'stable,' and 'long shelf life' were not used by defendants in an absolute sense. Defendants predicate much of their argument on the proposition that the words used are words of relative and not absolute meaning.

"We cannot accept defendants' argument that the offenses here charged could be committed only if words of absolute meaning were used. In cases involving relative words there are, of course, areas within the center of the spectrum that may involve difficulty but the tests of the particular products here involved reveal conditions that rise above or fall below any high or low water marks that could be said to be encompassed within any doubtful area toward the center of the concept of relativity.

"In order that the basis of our ultimate determination of this case be entirely clear, we make the following formal findings of fact and conclusions of law:

FINDINGS OF FACT

"1. This is a criminal action brought under the provisions of Section 301 and 303 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 331, 333.

"2. Defendants are charged with unlawfully introducing and delivering for introduction in interstate commerce a food which was: (a) adulterated within the meaning of 21 U.S.C. 342(b)(2); and (b) misbranded within the meaning of 21 U.S.C. 343(a) in that said food was represented to be 'stable' when, in fact, it was not stable, and did not have a 'long shelf life.'

"3. The food described in the information, namely, Vitamin D Enrichment Wafers, moved in interstate commerce in the manner alleged in each count of the information.

"4. This same food was labeled in part, 'Vitamin D Enrichment Wafers—Stable Long Shelf Life' and that such labels were part of the product as shipped in interstate commerce.

"5. An inspector of the Food and Drug Administration took samples of each lot of wafers described in the information, sealed them, and marked them with certain official Food and Drug sample identifying numbers as follows: For the lot of wafers described in Counts I and II the sample number 12-982 R was given; for the lot of wafers described in Counts III and IV the sample number 52-430 R; for the lot of wafers described in V and VI, the number 51-599 R.

"6. The stipulated evidence reveals beyond all reasonable doubt that the Vitamin D wafers described in the information were, in fact, unstable and did not have a 'long shelf life.' This evidence appears from the uncontradicted testimony of two Government analysts who tested representative samples of the wafers and found that the quantity of Vitamin D in each wafer decreased in a rapid and uniform manner. For example, for the wafers shipped to Denver, Colorado, those involved in Counts V and VI, the evidence shows that these wafers were shipped by defendants on January 23, 1961, and were examined by a Government analyst on March 29, 1961. At this time the wafers were 40% deficient in Vitamin D. For the wafers shipped to Minneapolis, those involved in Counts III and IV, a series of tests were run to determine the stability of the wafers. These tests reveal a steady deterioration of the product. The first test, run on December 23, 1960, revealed that the wafers contained 123% of the claimed amount of Vitamin D while the test run on February 15, 1961 showed that only 84% of the claimed amount of Vitamin D was present and the final test, in March 21, 1961, shows that only 48% of the claimed amount of Vitamin D was present. Finally, as to the wafers involved in Counts I and II, those shipped to Chicago, on or about August 8, 1960, were examined February 15, 1961, and found to be 75% deficient in the amount of claimed Vitamin D. Thus it appears that none of the wafers involved were able to retain Vitamin D over any significant period of time. In each case the uncontradicted evidence demonstrates that the amount of Vitamin D declined.

"7. Since the label declared this to be a stable Vitamin D enrichment product with a 'long shelf life' and since the uncontradicted evidence clearly demonstrates that the wafers involved were not stable then clearly an unstable

form of the product has been substituted for the stable, and just as clearly the labels falsely represent the true nature of the wafers involved.

"8. The defendant, Henry J. Johnson, is President and General Manager of the defendant corporation. According to inspectors of the Food and Drug Administration (visiting the defendants' plant) Mr. Johnson is the person responsible for the operation of the plant. He had to be seen before any decision could be made affecting any of the plant's operations.

"9. On the basis of the foregoing facts the defendants and each of them, are guilty on each count of violating the Federal Food, Drug, and Cosmetic Act, as charged.

CONCLUSIONS OF LAW

"1. This Court has jurisdiction of the cause and the parties, pursuant to 21 U.S.C. §§ 331 and 333.

"2. The Vitamin D enrichment wafer involved here is a food. 21 U.S.C. § 321(f).

"3. Under the Federal Food, Drug and Cosmetic Act, a food is adulterated if another product has been substituted in whole or in part therefor. 21 U.S.C. § 342(b)(2).

"4. Under the Federal Food, Drug and Cosmetic Act, a food is misbranded if the labels or labeling for that food are false or misleading in any particular. 21 U.S.C. § 343(a).

"5. The food here was adulterated within the meaning of 21 U.S.C. § 342(b)(2).

"6. The food here was misbranded within the meaning of 21 U.S.C. 343(a).

"7. The food here was adulterated and misbranded when introduced into and while in interstate commerce.

"8. The defendants are responsible for the introduction into interstate commerce of an adulterated and misbranded food.

"9. Intent is not an element of a criminal offense under the Federal Food, Drug and Cosmetic Act.

"10. The defendants and each of them are guilty in each count of violating the Federal Food, Drug and Cosmetic Act as charged.

ORDER FOR FURTHER PROCEEDINGS

"1. Rule 43 of the Rules of Criminal Procedure provides that a defendant corporation may appear by counsel for all purposes and that in prosecutions for offenses punishable by fine, the Court may, with the written consent of the defendant, impose sentence in the defendant's absence. Counsel for the defendant will advise the Court within five (5) days in regard to the defendant's wishes in this connection.

"2. The provisions of Rule 32(c) of the Rules of Criminal Procedure are hereby invoked and the Probation Service of this Court is ordered to make a presentence investigation and report that shall include any prior criminal record of the defendant, if any, and shall also include a report of any civil proceeding that may have been instituted against the defendant in connection with the enforcement of any state or federal statutes, if any.

"3. Counsel will be advised of the date on which sentence will be imposed and defendant will then be afforded an opportunity to make a statement on its own behalf and to present any information in mitigation of punishment. If defendant cares to submit a written statement in that regard before sentence is imposed, it may do so within fifteen (15) days.

"IT IS SO ORDERED."

On 2-14-64, each of the defendants were fined \$150.

29393. Cod liver oil. (F.D.C. No. 48383. S. Nos. 39-908/10 V.)

QUANTITY: 2 bulk drums, 25 cases, 6 doz. 1-oz. btls. each; 29 cases, 3 doz. 2-oz. btls. each; 51 cases, 3 doz. btls. each; and 29 cases, 2 doz. 8-oz. btls. each; at Hato Rey, P.R., in possession of Mendez Laboratories of America, Inc.

SHIPPED: 6-13-62, from Bergen, Norway.

LABEL IN PART: (Drum) Translated from Spanish "Cod Liver Oil With certified color [or "Cod Liver Oil U.S.P."] Each 5 cc contains: Vitamin A 4250 Units and Vitamin D 425 Units * * * Mendez Laboratories of America, Inc., San Juan, Puerto Rico."

RESULTS OF INVESTIGATION: Examination showed that the article in the bulk drums and in the bottles bearing the U.S.P. designation was a golden yellow, non-viscous liquid with the odor of cod liver oil, and that the article in the bottles labeled "with certified color" was a black-colored nonviscous liquid with the odor of cod liver oil, analysis of which showed that it contained External D&C Red No. 14. The article in the bottles was repacked by the dealer and prior to repacking the dealer added color to portions of the article.

LIBELED: 11-29-62, Dist. P.R.

CHARGE: 402(c)—while held for sale, the portion of the repacked article labeled "With certified color" contained External D&C Red No. 14, a color additive, which is unsafe within the meaning of 706(a) since it and its use or intended use were not in conformity with a regulation or exemption in effect; and 403(j)—the repacked article (all bottles) purported to be and was represented as food for special dietary use by reason of its vitamin content and its label failed to bear as required by regulations a statement of the proportion of the minimum daily requirement for vitamins A and D supplied by the article when consumed in a specified quantity during a period of one day.

The article in the drums and in the bottles was alleged also to be misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7531.

DISPOSITION: 3-12-63. Consent—claimed by Mendez Laboratories of America, Inc., and released under bond for the purpose of destroying the adulterated material and relabeling the material which was not adulterated but was misbranded.

29394. Dietary food wafers. (F.D.C. No. 49587. S. No. 82-114 X.)

QUANTITY: 32 cases, each containing 12 8-oz. boxes, at Nashville, Tenn.

SHIPPED: Between 8-16-63 and 10-22-63, from Evansville, Ind.

LIBELED: 1-7-64, M. Dist. Tenn.

CHARGE: 402(a) (3)—contained insects while held for sale.

DISPOSITION: 3-13-64. Default—destruction.

29395. Vitamin and mineral food supplements. (F.D.C. No. 49418. S. No. 95-373 V.)

QUANTITY: 373 ctns., each containing 728 mineral tablets and 364 vitamin tablets, at Southfield, Mich.

SHIPPED: Between 5-1-62 and 6-30-62, from Beverly Hills, Calif.

RESULTS OF INVESTIGATION: Examination showed that the article contained less than 78 percent of the labeled amount of vitamin B₁₂ and approximately 79 percent of the labeled amount of vitamin A.

LIBELED: 10-17-63, E. Dist. Mich.

CHARGE: 402(b) (1)—while held for sale, valuable constituents of the article, namely, vitamins A and B₁₂ had been in part omitted or abstracted; and 403(a) the label statement "2 Vitamin Tablets and 4 Mineral Tablets Daily

Will Supply: Vitamin A—8,000 USP Units—Vitamin B₁₂ Activity (Cobalamin) 5 mcg.” was false and misleading as applied to a product containing less than the declared amounts of these ingredients.

DISPOSITION: 1-17-64. Default—destruction.

29396. Vitamin supplements. (F.D.C. No. 49198. S. Nos. 82-851/3 V.)

QUANTITY: 1 drum containing approximately 2,500 tablets and 3 100-tablet btls. of Therabex; 2 drums containing approximately 22,000 tablets and 35 100-tablet btls. of Integra-T tablets; and 1 drum containing approximately 40,000 tablets and 10 100-tablet btls., of Vitaplus tablets; at Newark, N.J.

SHIPPED: Between 1-22-62 and 4-11-63, from Brooklyn, N.Y.

LABEL IN PART: (Drum) “Theragran Type Tablets * * * Formula: Each Tablet Contains: * * * Vitamin D 1,000 Units,” (btl.) “Therabex Therapeutic Formula Vitamin Tablets with B-12 * * * Each Tablet Contains * * * Vitamin D 1,000 U.S.P. Units,” (drum) “Integra-T Tablets * * * Each Tablet Contains * * * Vit. D (* * *) 1 M Units,” (btl.) “Integra-T Therapeutic Formula Vitamins with minerals * * * Each Capsule Contains * * * Vitamin D (as irradiated Ergosterol) 1,000 U.S.P. Units,” (drum) “Vitaplus tabs Formula Vit. A 10,000 Units * * * Ascorbic Acid 50 mg. * * * Vit. B-12 3 mcg.,” and (btl.) “Vitaplus Improved Multivitamin and Mineral Formula With 3 Mcg. B-12 * * * Vitamin A 10,000 U * * * Vitamin C (Ascorbic Acid) 50 mg. * * * Vit. B-12 (From Cobalamin Concentrate) 3 mcg.”

RESULTS OF INVESTIGATION: Analysis showed that the Therabex tablets contained approximately 33 percent of the declared amount of vitamin D; the Integra-T tablets contained approximately 47 percent of the declared amount of vitamin D; and the Vitaplus capsules contained approximately 75 percent of the declared amount of vitamin A, approximately 60 percent of the declared amount of vitamin C, and approximately 50 percent of the declared amount of vitamin B₁₂.

The articles were shipped in bulk drums, as shown above and repacked and relabeled by the dealer.

LIBELED: 7-29-63, Dist. N.J.

CHARGE: 402(b)(1)—while held for sale, the valuable constituents of the articles, namely, vitamin D, vitamin A, vitamin C, and vitamin B₁₂, had been in part omitted or abstracted therefrom; 2nd 403(a)—the label statements (repack bottle labels) (Therabex) “Each tablet contains * * * Vitamin D 1,000 Units,” (Integra-T) “Each Capsule Contains * * * Vitamin D * * * 1,000 USP Units,” (Vitaplus) “Vitamin A 10,000 U * * * Vitamin C (Ascorbic Acid) 50 mg. * * * Vit. B-12 (From Cobalamin Concentrate) 3 mcg.,” were false and misleading.

DISPOSITION: 9-12-63. Default—destruction.

29397. Kassik's hog pellets. (F.D.C. No. 48985. S. No. 54-288 V.)

QUANTITY: 18 80-lb. bags, at Milligan, Nebr., in possession of Kassik Companies.

SHIPPED: The article was manufactured in part from ingredients shipped on 8-10-62 and 1-7-63, from Charles City, Iowa, and Indianapolis, Ind.

LABEL IN PART: (Bag) “Kassik's Micro Engineered 14% Complete Hog Pellets Medicated For Swine Only * * * Active Drug Ingredients: Hygromycin B

0.006 grams (6000 units) per lb. 3-Nitro-4-Hydroxyphenylarsonic Acid
0.0025% * * * Manufactured by Kassik Companies, Milligan, Nebraska."

LIBELED: 5-27-63, Dist. Nebr.

CHARGE: 402(a) (2) (C)—while held for sale, the article contained a food additive, 3-nitro-4 hydroxyphenylarsonic acid, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption.

The libel alleged also that the article was adulterated and misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7579.

DISPOSITION: 7-16-63. Default—destruction.

29398. Standard's Hog Mineral Preparation Medicated. (F.D.C. No. 49214. S. No. 29-295 V.)

QUANTITY: 11 50-lb. bags, at Chadwick, Ill.

SHIPPED: 7-12-62 and 12-29-62, from Omaha, Nebr., by Standard Chemical Manufacturing Co.

LABEL IN PART: (Bag) "Standards Hog Mineral Preparation Medicated * * * Active Drug Ingredient Arsanilic Acid 0.50% * * * Station B—Omaha, Nebraska * * * Standard Chemical Mfg. Company," or "Standard's with Arsanilic Acid Hog Mineral Preparation * * * Standard Chemical Mfg. Co. * * * Omaha, Nebr."

ACCOMPANYING LABELING: Inserts entitled "Standard's Hog Mineral Preparation Medicated" or "An Alfalfa Concentrate * * * 40% Concentrate without Alfalfa."

LIBELED: 8-2-63, N. Dist. Ill.

CHARGE: 402(a) (2) (C)—when shipped, the article contained a food additive, namely, arsanilic acid, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption.

The libel alleged also that the article was misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7516.

DISPOSITION: 10-2-63. Default—destruction.

MISCELLANEOUS FOODS

29399. Bakery pan coating. (F.D.C. No. 48265. S. No. 12-202 V.)

QUANTITY: 4 430-lb. drums at Chicago, Ill.

SHIPPED: 6-14-62, from Los Angeles, Calif., by Colony Products Co.

LABEL IN PART: "Colony Products Company CBCLA * * * Colony Bakery Pan Coating USP * * * 100 Vegoil * * * Los Angeles, California."

RESULTS OF INVESTIGATION: Examination showed that the article was an oil which contained approximately 5.6 percent mineral oil.

LIBELED: 11-2-62, N. Dist. Ill.

CHARGE: 402(b) (2)—when shipped, mineral oil had been substituted in whole or in part for vegetable oil; 403(a)—the name of the article "Bakery Pan Coating USP * * * 100 Vegoil" was false and misleading, in that it suggested and implied that the article was vegetable oil and recognized in the United

States Pharmacopeia; and 402(i)(2)—the label of the article failed to bear the common or usual name of each ingredient.

DISPOSITION: 12-19-62. Consent—claimed by Colony Products Co., Vernon, Calif., and relabeled.

29400. Par-Pic snacks. (F.D.C. No. 49572. S. No. 64-196 X.)

QUANTITY: 40 cases, each containing 12 pkgs., at Hopkins, Minn.

SHIPPED: 11-7-63, from Manchester, Mo., by Par-Pic Food Products Co., Inc.

LABEL IN PART: (Pkg.) "Delicious High Protein Par-Pic The Aristocrat Of Snacks Nutritious 5 Oz. Net Wt. Ingredients Choice Nuts, Cereals, Pretzels, Vegetable Oil, Seasonings * * * Par-Pic Food Products Co. Manchester, Mo."

RESULTS OF INVESTIGATION: The article was found to be approximately 5.8 percent short weight.

LIBELED : 1-2-64, Dist. Minn.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of quantity of contents; 403(i)(2)—the label of the article failed to bear the common or usual name of each ingredient since “choice nuts,” “cereals” and “seasonings” were not the common or usual names for ingredients.

DISPOSITION: 2-14-64. Default—ordered delivered to a charitable institution.

INDEX TO NOTICES OF JUDGMENT F.N.J. NOS. 29301 TO 29400

PRODUCTS

	N.J. No.		N.J. No.
Alfalfa hay_____	29343	Cider, apple. See Apple juice.	
Apple juice_____	29355	Cinnamon, stick_____	29390
Bakery pan coating_____	29399	Cod liver oil_____	29393
Barley_____	29332	Color additive violation_____	29393
Beans, lima, dried_____	29363, 29365	Cooking oils_____ °	29301, 29389
pinto, dried_____	29364, 29365, 29390	Cornmeal_____ °	29301, 29302, 29312
Black-eyed peas, canned_____	29369	mix_____	29302
Block salt_____	29344	Cottonseed oil, crude_____	29387, 29388
Brazil nuts, shelled_____	29380	Cowpeas, dried_____	29366
Breeding_____	29334-29336	Dairy products_____	29339-29342
Broccoli, frozen_____	29360, 29361	Dietary food wafers_____	29394
Butter_____	29339	Fats. See Oils and fats.	
peanut_____	29385	Feeds and grains_____	29343, 29344
whipped_____	29340	Field peas, canned_____	29368
Buttermilk, dried_____	29342	Fish and shellfish_____	29345-29348
Cake flour_____	29312	Flour_____	29303-29314
Cauliflower, fresh_____	29362	cake_____	29312
Cereals and cereal products ° 4 29301-29338		potato_____	29313
Cheese, romano_____	29341	rice_____	29311
Chili relish, green, hot_____	29372	self-rising_____	29314
Chop suey vegetables, mushroom, canned_____	29370	soy_____	29311
		Food additive violations_____	29360, 29361, 29397, 29398

^o(29301, 29356, 29359) Seizure contested.

⁴(29322) Motion for preliminary injunction denied. Contains decision and order of the court.

	N.J. No.		N.J. No.
Fruits and vegetables--	⁰⁰ 29349-29379	Pickle(s) chips, sweet-----	29373
fruit, canned-----	29349-29354	cucumber, sweet-----	29374
miscellaneous fruit products		Pinto beans, dried-----	29364,
⁰ 29355-29358			29365, 29390
marmalade and preserves----	⁰ 29359	Pizza sauce, canned-----	29379
tomatoes and tomato products		Plums, canned-----	29350-29354
	29375-29379	Popcorn, unpopped-----	29337, 29338
vegetables and vegetable prod-		Potato flour-----	29313
ucts-----	29360-29374	Preserves, pineapple-cherry----	⁰ 29359
Glaced fruit-----	29357	Raspberry screenings, black----	29311
Grits, hominy-----	29314	Relish, chili, green, hot-----	29372
Hay, alfalfa-----	29343	Rice-----	29310, 29333
Hominy grits-----	29314	flour-----	29311
Integra-T tablets-----	29396	Romano cheese-----	29341
Kassik's hog pellets-----	29397	Salt blocks-----	29344
Lemon juice, imitation, dehy-		Self-rising flour-----	29314
drated-----	⁰ 29356	Shellfish. <i>See</i> Fish and shellfish.	
Lima beans, dried-----	29363, 29365	Shrimp, breaded-----	29347
Lobster tails, frozen-----	¹ 29348	Soy flour-----	29311
Macaroni and noodle prod-		Spaghetti. <i>See</i> Macaroni and	
ucts-----	² 29315-29321	noodle products.	
Marmalade, grapefruit-cherry--	⁰ 29359	Spaghetтини. <i>See</i> Macaroni and	
orange-cherry-----	⁰ 29359	noodle products.	
Mushroom(s), canned----	29370, 29371	Standard's Hog Mineral Prepar-	
chop suey vegetables, canned--	29370	ation Medicated-----	29398
Mix, cornmeal-----	29302	Therabex tablets-----	29396
Noodles. <i>See</i> Macaroni and		Tomato(es), canned-----	29375-29377
noodle products.		juice-----	29378
Nuts and nut products----	29380-29386	Tunafish, canned-----	29346
Oils and fats-----	⁰ 29301, 29387-29389	Turmeric, ground-----	29391
Par-Pic snacks-----	29400	whole-----	29391
Peach(es), canned-----	29349	Vegetables. <i>See</i> Fruits and	
concentrate-----	29358	vegetables.	
Peanut(s), butter-----	29385	Vermicelli. <i>See</i> Macaroni and	
shelled-----	29381	noodle products.	
Spanish, shelled-----	29382-29384	Veterinary products-----	29397, 29398
Peas, black-eyed, canned-----	29369	Vitamin, mineral, and other prod-	
field, canned-----	29368	ucts of special dietary sig-	
green-----	29367	nificance -----	29392-29398
Pecan meal-----	29386	Vitamin D milk enrichment prod-	
Peppers, pickled-----	29374	uct-----	³ 29392
Perch fillets, frozen-----	29345	Vitaplus tablets-----	29396
Pesticide chemical violations--	29331,	Wheat -----	⁴ 29322-29331
	29332, 29343, 29362		

⁰(29301, 29356, 29359) Seizure contested.¹(29348) Seizure contested; request for summary judgment.²(29315) Injunction issued.³(29392) Prosecution contested. Contains memorandum opinion, findings of fact, and conclusions of law.⁴(29322) Motion for preliminary injunction denied. Contains decision and order of the court.

SHIPPERS, MANUFACTURERS, AND DISTRIBUTORS

	N.J. No.		N.J. No.
A & P, Great, Tea Co. <i>See</i> National Produce.		juice-----	^o 29356
Admiral (boat) :		Colony Products Co. :	
frozen perch fillets-----	29345	bakery pan coating-----	29399
American Stores Co. :		Columbus Foods Co. :	
cucumber pickles and pickeled		cooking oils-----	29389
peppers-----	29374	Comet Rice Mills, Inc. :	
Andrews, Simpson :		flour and rice-----	29310
flour -----	29308	Corinth Farmers Elevator Co. :	
Andrews, Simpson, Co. :		wheat-----	29323
flour-----	29308	Cornwall Warehouse Co. :	
Atlantic Co. :		rice-----	29333
shelled peanuts-----	29381	Creamette Co. :	
Baker, R. O. :		spaghetti-----	29321
pecan meal-----	29386	Dalton's, Mrs., Best Maid Products, Inc. :	
Baumer Foods, Inc. :		sweet pickle chips-----	29373
tumeric, whole and ground----	29391	Dartmouth Marketing Co., Inc. :	
Becker, W. C. :		breaded shrimp-----	29347
cucumber pickles and pickled		Denison Peanut Co. :	
peppers-----	29374	shelled Spanish peanuts-----	29382
Beebe, A. M., Co. :		Dixie Lily Milling Co. of North	
canned plums-----	29350	Florida :	
Bess, J. F., & Co. :		cornmeal and cooking oil-----	^o 29301
cornmeal and cornmeal mix----	29302	Dixie Saving Stores, Inc. :	
Boats. <i>See</i> Admiral.		flour-----	29305
Boerstler, C. R. :		Eagle Macaroni Co., Ltd. :	
noodle products-----	29316	flour-----	29306
Boerstler, Lee :		Eastern Canners :	
noodle products-----	29316	canned tomatoes-----	29375
Brandywine Mushroom Corp. :		Eastern Retailer-Owned Grocers	
canned mushrooms and canned		Cooperative, Inc. :	
mushroom chop suey vegetables-----	29370	canned tomatoes-----	29377
Braun, J. F., & Sons :		Elkhart Cooperative Equity Exchange :	
shelled brazil nuts-----	29380	wheat-----	29329
Brenham Wholesale Grocery Co.,		Erlandson, G. E. :	
Inc. :		wheat-----	⁴ 29322
flour-----	29307	Eureka Equity Exchange :	
Cargill, Inc. :		wheat-----	29325
wheat-----	⁴ 29322	Farmers Cooperative Elevator	
Chicago Macaroni & Food Products Co. :		Co. :	
noodle products-----	² 29315	wheat-----	29324
Christie Food Products, Inc. :		Farmers Elevator Co. :	
imitation dehydrated lemon		wheat-----	29331

^o(29301, 29356, 29359) Seizure contested.²(29315) Injunction issued.⁴(29322) Motion for preliminary injunction denied. Contains decision and order of the court.

	N.J. No.		N. J. No.
Farmers Union Elevator Co.:		M & S Grocery Co.:	
wheat-----	29330	cake flour and cornmeal-----	29312
Farmers Union Grain Terminal Association:		Martin, W. B., Jr.:	
wheat-----	29326	pecan meal-----	29386
Fishers United Supply, Inc.:		Matalone, J.S.:	
rice flour, soy flour, and black raspberry screenings-----	29311	noodle products-----	² 29315
Food Products Laboratories, Inc.:		Mayfair Markets:	
vitamin D milk enrichment product-----	³ 29392	flour-----	29304
Gristede Bros., Inc.:		McCulloch, J. L.:	
peanut butter-----	29385	crude cottonseed oil-----	29387
Groce-Weardon Co.:		Mel-Williams Co.:	
dried pinto beans-----	29364	canned plums-----	29351, 29354
Hart, D. E.:		Mendez Laboratories of America, Inc.:	
wheat-----	⁴ 29322	cod liver oil-----	29393
Hollister Canning Co.:		Min-Sun Trading Co.:	
canned plums-----	29352	canned mushrooms and canned mushroom chop suey vegetables-----	29370
Jaub Milling & Elevator Co.:		Munster Equity Elevator:	
flour-----	29304	wheat-----	29327
Johnson, H. J.:		National Cheese Co.:	
vitamin D milk enrichment product-----	³ 29392	whipped butter-----	29340
Jones Canning Co.:		National Produce, Div. of Great Atlantic & Pacific Tea Co.:	
canned peaches-----	29349	fresh cauliflower-----	29362
Junge Baking Co., Inc.:		Northeast Iowa Cooperative Creameries Association:	
dried buttermilk-----	29342	butter-----	29339
Kassik Companies:		Old Black Joe Co.:	
Kassik's hog pellets-----	29397	canned black-eyed peas-----	29369
King of Spuds, Inc.:		dried cowpeas-----	29366
potato flour-----	29313	Old Ranchers Canning Co., Inc.:	
La Primadora Food Products, Inc.:		canned plums-----	29353
canned mushrooms-----	29371	Old Ranchers Co.:	
canned pizza sauce (tomato product)-----	29379	canned plums-----	29350-29354
La Victoria Foods, Inc.:		Parisi Bros., Inc.:	
hot green chili relish-----	29372	canned pizza sauce (tomato product)-----	29379
Lee County Peanut Co.:		Par-Pic Food Products Co., Inc.:	
shelled Spanish peanuts-----	29384	Par-Pic snacks-----	29400
Luck's, Inc.:		Peavey Co. Producers Service:	
canned field peas-----	29368	barley-----	29332
Lummis & Co., Div. of U.S. Tobacco Co.:		Pendleton Oil Mill, Inc.:	
peanut butter-----	29385	crude cottonseed oil-----	29388

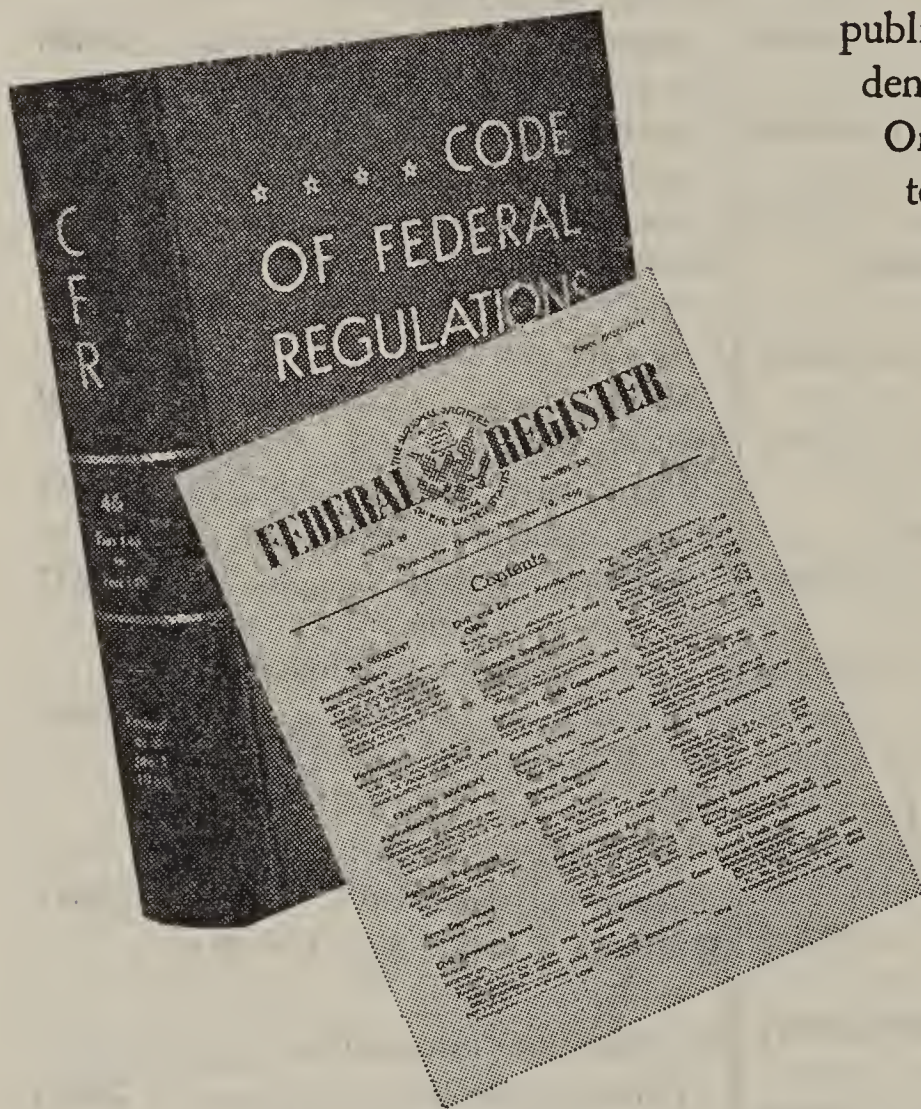
²(29315) Injunction issued.³(29392) Prosecution contested. Contains memorandum opinion, findings of fact, and conclusions of law.⁴(29322) Motion for preliminary injunction denied. Contains decision and order of the court.

	N. J. No.		N. J. No.
Pieper, O. R., Co. :		Sorrentino, Archimede :	
cooking oils-----	29389	canned pizza sauce (tomato	
Pop-Corn Crib, Inc. :		product) -----	29379
unpopped popcorn-----	29338	Standard Chemical Manufactur-	
Ragland, C. B., Co., Inc. :		ing Co. :	
dried pinto beans and dried		Standard's Hog Mineral Prep-	
lima beans-----	29365	aration Medicated-----	29398
Ramo, Inc. :		Steffen, M., & Co., Inc. :	
pecan meal-----	29386	apple cider-----	29355
Ravarino & Freschi, Inc. :		Stuckey's, Inc. :	
macaroni products-----	29319, 29320	marmalade and preserves-----	^o 29359
Reames Frozen Foods :		Sunaid Food Products, Inc. :	
frozen noodles-----	29317	marmalade and preserves-----	^o 29359
Reames Home Style Frozen		Sunshine Pecan Co. See Ramo,	
Foods :		Inc.	
frozen noodles-----	29317	Supowitz, Arthur :	
Rich Plan Corp. :		flour -----	29309
frozen broccoli-----	29361	Teslow, Inc. :	
Rio Stores, Inc. :		block salt-----	29344
self-rising flour and hominy		Topco Associates, Inc. :	
grits -----	29314	breaded shrimp-----	29347
S & R Trading Co., Inc. :		Trevino, J. M., Inc. :	
flour -----	29309	stick cinnamon and dried pinto	
Santa Maria Packing Co. :		beans -----	29390
green peas-----	29367	U. S. Tobacco Co. See Lummis &	
Shoemaker's Candies :		Co.	
shelled Spanish peanuts-----	29383	Victor Cotton Oil Co. :	
Simonds-Shields-Thies Grain Co. :		crude cottonseed oil-----	29387
wheat -----	29328	Walbeck Foods. See Becker,	
Sisk, A. W., & Son :		W. C.	
canned tomatoes-----	29376, 29377	Watsonville Canning Co. :	
Sitton, A. J. :		frozen broccoli-----	29360
crude cottonseed oil-----	29388	Western Pacific Railroad Co. :	
Snow Crest Beverages, Inc., Food		flour -----	29303
Div. :		Whipped Butter Products, Inc. :	
glaced fruit-----	29357	whipped butter-----	29340
Sorrentino, Anna :		Zenith-Godley Co., Inc. :	
canned pizza sauce (tomato		butter -----	29339
product) -----	29379		

^o(29301, 29356, 29359) Seizure contested.

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OCT 16 1964

F.N.J., F.D.C. 29401-29500

Issued October 1964

CURRENT SERIAL RECORDS

U.S. Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

29401-29500

FOODS

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were alleged to be adulterated or misbranded within the meaning of the Act, when introduced into and while in interstate commerce, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default or consent; (2) criminal proceedings which were terminated upon pleas of guilty and nolo contendere or, in one case, upon a verdict of not guilty to one count and of guilty to another count; and which proceedings involved, in one case, a contempt action for violation of a permanent injunction, and, in another case, a mistrial and a judgment of acquittal on one count; and (3) an injunction proceeding terminated upon the entry of a permanent injunction by consent. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal and injunction proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., *September 25, 1964.*

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SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN ALLEGED VIOLATIONS REPORTED IN F.N.J. NOS. 29401-29500

Adulteration, Section 402(a) (2) (B), the article was a raw agricultural commodity and it bore or contained a pesticide chemical which was unsafe within the meaning of Section 408(a); Section 402(a) (2) (C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a) (4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b) (1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b) (2), a substance had been substituted in whole or in part for the article; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because no tolerance or exemption from the requirement of a tolerance for such pesticide chemical in or on the raw agricultural commodity had been prescribed by the Secretary of Health, Education, and Welfare, or because the quantity of the pesticide chemical in or on the raw agricultural commodity was not within the limits of a tolerance prescribed by the Secretary of Health, Education, and Welfare; and Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use.

Misbranding, Section 403(a), the labeling of the article was false and misleading; Section 403(e), the article was in package form, and it failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g) (2), the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed by regulations and its label failed to bear, as required by regulations, the common name of certain optional ingredients present in such food; Section 403(i), the article was not subject to the provisions of Section 403(g) and (1) its label failed to bear the common or usual name of the article, and (2) the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; and Section 403(k), the article contained a chemical preservative and failed to bear labeling stating that fact.

CEREALS AND CEREAL PRODUCTS

BAKERY PRODUCTS

29401. French hard rolls, angelfood cake, and pound cake. (F.D.C. No. 45987. S. Nos. 46-272 R, 58-263/4 R.)

INDICTMENT RETURNED: 12-4-61, M. Dist. Ga., against Benson's, Inc., Bogart, Ga.

SHIPPED: Between 9-28-60 and 10-9-60, from Bogart, Ga., to Greenville, S.C.

LABEL IN PART: "12 Enriched Rolls French Hard * * * Rolls Dixie Darling Distributed Exclusively By Winn-Dixie Stores, Inc. Headquarters: Jacksonville, Fla.," "DIXIE DARLING Angel Food Cake 49¢ Net Wt. 1 Lb. 1 Oz. Dist. By Winn-Dixie Stores, Inc. Jacksonville, Florida," and "DIXIE DARLING Pound Cake Special 39¢ Net Wt. 1 Lb. Dist. By Winn-Dixie Stores, Inc. HDQS. Jacksonville, Fla."

CHARGE: 402(a)(3)—contained fly and insect parts and rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 12-5-61. \$1,500 fine.

29402. Bread and rolls. (F.D.C. No. 45584. S. Nos. 35-556/7 R.)

INFORMATION FILED: 7-6-61, Dist. N.J., against Victory Baking Co., a partnership, Jersey City, N.J., and Max Cohen, partner.

SHIPPED: On 9-29-60, from Jersey City, N.J., to New York, N.Y.

LABEL IN PART: (Pkg.) "COHEN Victory Jersey City, N.J. BLUMAN."

CHARGE: 402(a)(3)—contained insects and insect parts; and 402(a)(4)—prepared under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 1-10-64. Partnership and individual each fined \$800.

29403. Diet-Snax crackers. (F.D.C. No. 46159. S. No. 73-809 R.)

QUANTITY: 257 cases, each containing 36 pkgs., at Los Angeles, Calif.

SHIPPED: Between 6-6-61 and 6-30-61, from New York, N.Y., by Aron Streit, Inc.

LABEL IN PART: (Pkg.) "Diet-Snax by Streit's—Net Wt. 12 ozs.—Mfd. by Aron Streit, Inc., * * * N.Y., N.Y."

RESULTS OF INVESTIGATION: Examination showed the article to be approximately 7½ percent short weight.

LIBELED: 8-2-61, S. Dist. Calif.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of the contents, since the label statement "Net Wt. 12 Ozs." was inaccurate.

DISPOSITION: 8-23-61. Consent—claimed by I. Rudin & Co., of Los Angeles, Calif., and relabeled.

29404. Fruitcake with sauce. (F.D.C. No. 47145. S. No. 40-925 T.)

QUANTITY: 25 34¼-oz. cans and 26 24½-oz. cans, at Brooklyn, N.Y.

SHIPPED: Between 12-4-61 and 12-18-61, from Houston, Tex., by Carver Foods Co.

LABEL IN PART: (Can lid) "Mrs. Carver's [on top] * * * [on sides] 25 Miniatures plus 2¾ oz. rum sauce * * * Ingredients in both Light and Dark cakes: * * * sodium propionate * * * If Light cake: also contains sherry wine * * * If Dark cake: also contains genuine aged rum, age-old brandy, home-baked by Carver Foods Company, Houston, Texas"; (jar) "Delicious Rum Sauce * * * Ingredients: Genuine Rum, Age-Old Brandy."

RESULTS OF INVESTIGATION: Each can contained a number of small fruitcakes and a small jar of sauce. The information printed on the rim of the can lid was in small type on a nonuniform background, and that on the rum sauce label was printed in very small type on a highly reflective surface.

LIBELED: 2-27-62, E. Dist. N.Y.

CHARGE: 403(a)—when shipped, the label statements (can) “sherry wine” “genuine aged rum” “age-old brandy,” and “home-baked” and (jar) “Genuine Rum,” and “Age-Old Brandy,” were false and misleading as applied to products containing little or none of these ingredients; and which were not home-baked; 403(e)—the label of the sauce jar failed to bear (1) the manufacturer’s name and place of business and (2) a statement of the quantity of the contents; 403(f)—the information required under sections 403(e) (1) and (2), 403(i) (2), and 403(k), namely, (can) the name and address of the manufacturer, and the quantity of contents statement; (can and jar) the common or usual name of each ingredient; the declaration of artificial flavor and color, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use; and 403(k)—the label failed to declare the fact that the sodium propionate was a chemical preservative.

DISPOSITION: 7-26-62. Default—destruction (the article having become unfit after the seizure was made).

CORNMEAL

29405. Cornmeal. (F.D.C. No. 49535. S. Nos. 69-300 V, 69-666/7 V, 69-722 V, 3-221/2 X, 3-787/9 X.)

INFORMATION FILED: 1-31-64, E. Dist. N.C., against Samuel H. James, owner of a cornmeal mill, Ahoskie, N.C.

SHIPPED: Between 4-16-63 and 7-8-63, from Ahoskie, N.C., to Whaleyville, Va.

LABEL IN PART: (Bag) “2 Lbs. Net Wt. [or “5 Lbs. Net Weight”] North Carolina White [or “Yellow”] Corn Meal Packed By Samuel H. James Ahoskie, N.C.”

CHARGE: 402(a) (3)—contained insects, insect fragments, insect webbing, and rodent hair fragments; and 402(a) (4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-25-64. \$900 fine of which \$400 remitted, and probation for 18 months.

29406. Cornmeal. (F.D.C. No. 48527. S. Nos. 5-519 T, 5-326/8 T, 5-334 T, 5-341/3 T, 85-741 T, 85-743 T.)

INFORMATION FILED: 4-24-63, E. Dist. N.C., against Chowan Milling Co., Inc., Como, N.C., and Davis B. Spiers, Sr., president.

SHIPPED: Between 5-10-62 and 8-31-62, from Como, N.C., to Salisbury, Md., and Norfolk, Va.

LABEL IN PART: (Bag) “2 [or “5”] Lbs. Net Wt. White Plain [or “Self Rising”] Corn Meal Milled By Chowan Milling Co., Inc. Como, N.C.”

CHARGE: 402(a) (3)—contained insects, insect fragments, and rodent hair fragments; and 402(a) (4)—held under insanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 3-23-64. Defendants fined jointly \$1,000 of which \$800 remitted.

FLOUR*

29407. Flour. (F.D.C. No. 46304. S. Nos. 75-322/4 R.)

QUANTITY: 96 100-lb. bags, 255 100-lb. bags, and 24 100-lb. bags at Fort Valley, Ga., in possession of Happyvale Flour Mills.

SHIPPED: Between 3-9-61 and 7-5-61, from Fort Wayne, Ind., Denver, Colo., and Shawnee, Okla.

LIBELED: 8-17-61, M. Dist. Ga.

CHARGE: 402(a)(3)—all lots contained rodent urine and the 96-bag lot contained insects and insect larvae; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 10-12-61. Consent—claimed by Griffin Grocery Co., Griffin, Ga., and denatured.

29408. Flour. (F.D.C. No. 46132. S. Nos. 68-098 R, 95-619 R.)

QUANTITY: 165 bales of 10 5-lb. bags and 52 bales of 5 10-lb. bags at Fort Worth, Tex.

SHIPPED: Prior to 6-28-61, from Atchison, Kans.

LIBELED: 7-31-61, N. Dist. Tex.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-1-61. Default—delivered to a Government institution for use as animal feed.

29409. Flour, piecrust mix, cake mix, pancake mixes, and other cereal products.
(F.D.C. No. 47540. S. Nos. 55-499 T, 77-501/2 T.)

QUANTITY: 46,379 lbs. at Tampa, Fla.

SHIPPED: 5-16-62, from Chattanooga, Tenn., and on an unknown date from Georgia to Florida.

RESULTS OF INVESTIGATION: The articles were held in an insect-infested railroad car.

LIBELED: 6-6-62, S. Dist. Fla.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—held under insanitary conditions while in interstate commerce.

DISPOSITION: 6-19-62. Consent—claimed by the Seaboard Air Line Railroad Co., Richmond, Va. Segregated; 17,500 lbs. denatured for use as animal feed.

29410. Flour, sesame seed, and rice. (F.D.C. No. 48147. S. Nos. 28-956/7 T, 28-960 T.)

INFORMATION FILED: 11-16-62, Dist. Kans., against Lady Baltimore Wholesale Grocery Co., a partnership, Kansas City, Kans., and Melvin Cosner and Jack Baraban, partners.

ALLEGED VIOLATIONS: Between 11-17-61 and 2-9-62, while a number of bags of flour, sesame seed, and rice were being held for sale after shipment in interstate commerce, the defendants caused such articles to be held in a building that was accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the articles being adulterated.

*See also No. 29443.

CHARGE: 402(a)(3)—the flour contained rodent excreta pellets, and the sesame seed contained rodent urine and rodent excreta pellets; and 402(a)(4)—all the articles held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-11-63. Each individual fined \$600, plus costs; and the partnership (which had been dissolved) fined \$1.

29411. Flour. (F.D.C. No. 49450. S. No. 10-210 X.)

QUANTITY: 100 100-lb. bags at Oil City, Pa.

SHIPPED: 8-28-63, from Buffalo, N.Y.

LIBELED: 11-18-63, W. Dist. Pa.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-11-63. Default—destruction.

29412. Flour. (F.D.C. No. 48551. S. Nos. 1-600 T, 204/6 V.)

INFORMATION FILED: 7-23-63, N. Dist. Fla., against John B. Higdon, Sr., Quincy, Fla.

ALLEGED VIOLATIONS: Between 2-27-62 and 9-21-62, and while quantities of flour were being held for sale after shipment in interstate commerce, the defendant caused the flour to be held in a building that was accessible to rodents and insects, and caused the flour to be exposed to contamination by rodents and insects thereby causing the flour to become adulterated.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 2-4-64. \$750 fine.

29413. Gluten flour and rice. (F.D.C. No. 49520. S. Nos. 2-892/3 X.)

QUANTITY: 162 100-lb. bags of gluten flour, and 97 25-lb. bags of rice, at Miami, Fla.

SHIPPED: Between 6-5-63 and 8-29-63, from Minneapolis, Minn., and Houston, Tex.

LIBELED: 11-22-63, S. Dist. Fla.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 2-17-64. Default—destruction.

29414. Pastry flour. (F.D.C. No. 49638. S. No. 66-554 X.)

QUANTITY: 35 100-lb. bags at Atlanta, Ga., in possession of S. Paul Travis Co.

SHIPPED: 10-3-63, from Evansville, Ind.

LIBELED: 12-13-63, N. Dist. Ga.

CHARGE: 402(a)(3)—the article was rodent-gnawed; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-8-64. Consent—claimed by S. Paul Travis Co. Segregated; 15 bags denatured for use as animal feed.

29415. Pastry flour. (F.D.C. No. 49375. S. Nos. 66-524/5 X.)

QUANTITY: 103 100-lb. bags of pastry flour and 28 100-lb. bags of flour at Atlanta, Ga., in possession of S. Paul Travis Co.

SHIPPED: 7-9-63 and 8-6-63, from Chattanooga, Tenn., and Evansville, Ind.

LIBELED: 10-2-63, N. Dist. Ga.

CHARGE: 402(a)(3)—the 103-bag contained rodent urine and rodent hairs; and 402(a)(4)—both lots held under insanitary conditions.

DISPOSITION: 11-22-63. Consent—claimed by S. Paul Travis Co. Segregated; 15 100-lb. bags denatured for use as animal feed.

29416. Soy flour. (F.D.C. No. 49605. S. Nos. 18-561/2 A.)

QUANTITY: 12 100-lb. bags at Buffalo, N.Y.

SHIPPED: 2-13-63, from Chicago, Ill.

LIBELED: 1-24-64, W. Dist. N.Y.

CHARGE: 402(a)(3)—while held for sale, the article contained insects; and 403(e)(1)—the label of the article failed to bear the name and place of business of the manufacturer, packer, or distributor.

DISPOSITION: 4-20-64. Consent—destruction.

MISCELLANEOUS CEREALS AND CEREAL PRODUCTS*

29417. Barley. (F.D.C. No. 47764. S. No. 70-232 T.)

QUANTITY: 118,560 lbs. at Minneapolis, Minn.

SHIPPED: 5-23-62, from Brookings, S. Dak., by Farmers Cooperative Co.

LIBELED: 6-20-62, Dist. Minn.

CHARGE: 402(a)(2)(B)—the article was a raw agricultural commodity and, when shipped, contained a pesticide chemical, namely, a mercurial compound, which was unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on barley has been prescribed by regulations.

DISPOSITION: 6-22-62. Consent—claimed by Farmers Cooperative Co. Cleaned; 16,986 lbs destroyed.

29418. Barley. (F.D.C. No. 46500. S. No. 15-428 T.)

QUANTITY: 39 100-lb. bags at Indianapolis, Ind.

SHIPPED: 9-7-61, from Cedar Rapids, Iowa.

LIBELED: 10-25-61, S. Dist. Ind.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-5-61. Default—destruction.

29419. Cereal flakes with raisins. (F.D.C. No. 45696. S. No. 46-385 R.)

INFORMATION FILED: 2-8-62, N. Dist. Ohio, against Sniderman Bros., Inc., Youngstown, Ohio, and Harvey Sniderman, vice president.

ALLEGED VIOLATIONS: Between 10-18-60 and 11-1-60, while quantities of cereal flakes with raisins were being held for sale after shipment in interstate commerce, the defendants caused the article to be held in a building that was accessible to rodents and exposed to contamination by rodents.

CHARGE: 402(a)(3)—contained rodent excreta pellets; and 402(a)(4)—held under unsanitary conditions.

PLEA: Nolo contendere.

DISPOSITION: 10-22-62. Corporation and individual each fined \$125.

*See also Nos. 29409, 29410, 29413.

29420. Rice. (F.D.C. No. 46179. S. Nos. 84-970/2 R.)

QUANTITY: 100 25-lb. bags and 59 100-lb. bags at St. Louis, Mo.

SHIPPED: Between 12-9-60 and 5-4-61, from Stuttgart, Ark.

LIBELED: 8-16-61, E. Dist. Mo.

CHARGE: 402(a) (3)—contained insects while held for sale.

DISPOSITION: 10-5-61. Default—destruction.

29421. Rolled oats, quick-cooking oats, macaroni, and quick-cooking rolled oats.

(F.D.C. No. 46636. S. Nos. 27-036/40 T, 27-043/4 T.)

QUANTITY: 4 100-lb. bags and 80 5-lb. bags of rolled oats, 2 100-lb. bags of quick-cooking oats, 13 10-lb. cases and 18 20-lb. cases of elbow macaroni, and 110 5-lb. bags of quick-cooking rolled oats, at Omaha, Nebr.

SHIPPED: Between 5-26-61 and 8-29-61, from Chicago, Ill., and Cedar Rapids, Iowa.

LIBELED: 11-24-61, Dist. Nebr.

CHARGE: 402(a) (3)—while held for sale, all of the articles contained insects and the 100-lb. bag lot of rolled oats contained insect larvae.

DISPOSITION: 1-3-62. Default—destruction.

29422. Wheat. (F.D.C. No. 44491. S. No. 44-056 R.)

QUANTITY: 120,240 lbs. at Seattle, Wash.

SHIPPED: 5-27-60, from Chappell, Mont., by Gallatin Valley Milling Co.

LIBELED: 6-9-60, W. Dist. Wash.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-23-60. Consent—claimed by Fisher Flouring Mills Co., Seattle, Wash., and denatured for use as animal feed.

29423. Wheat. (F.D.C. No. 47496. S. No. 59-218 T.)

QUANTITY: 115,400 lbs. at Duluth, Minn.

SHIPPED: 4-28-62, from Washburn, N. Dak., by Merle A. Larson, Inc.

LIBELED: 5-16-62, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 5-21-62. Consent—claimed by Merle A. Larson, Inc., Washburn, N. Dak., and denatured.

29424. Wheat. (F.D.C. No. 47519. S. No. 34-040 T.)

QUANTITY: 87,000 lbs. at Minneapolis, Minn.

SHIPPED: 5-19-62, from Carrington, N. Dak., by Don Nicolson Elevator.

LIBELED: 5-31-62, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-5-62. Consent—claimed by Don Nicolson and denatured for use as animal feed.

29425. Wheat. (F.D.C. No. 47751. S. No. 70-661 T.)

QUANTITY: 120,000 lbs. at Minneapolis, Minn.

SHIPPED: 5-21-62, from Scranton, N. Dak., by Scranton Equity Exchange.

LIBELED: 6-13-62, Dist. Minn.

CHARGE: 402(a) (3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-29-62. Consent—claimed by Scranton Equity Exchange and denatured.

29426. Wheat. (F.D.C. No. 47757. S. No. 63-464 T.)

QUANTITY: 118,800 lbs. at Minneapolis, Minn.

SHIPPED: 5-26-62, from Hettinger, N. Dak., by Hettinger Cooperative Equity Elevator Co.

LIBELED: 6-15-62, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-29-62. Consent—claimed by Hettinger Cooperative Equity Exchange and denatured.

29427. Wheat. (F.D.C. No. 47759. S. No. 63-611 T.)

QUANTITY: 120,000 lbs. at Minneapolis, Minn.

SHIPPED: 5-24-62, from Knox, N. Dak., by Farmers Union Elevator.

LIBELED: 6-19-62, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 6-29-62. Consent—claimed by Farmers Union Elevator of Knox, N. Dak., and denatured.

29428. Wheat. (F.D.C. No. 47776. S. No. 33-700 T.)

QUANTITY: 114,000 lbs. at Wabasha, Minn.

SHIPPED: 5-24-62, from Hettinger, N. Dak., by Hettinger Cooperative Equity Exchange.

LIBELED: 6-25-62, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-11-62. Consent—claimed by Hettinger Cooperative Equity Exchange and denatured.

29429. Wheat (2 seizure actions). (F.D.C. Nos. 47774; 47799. S. Nos. 67-123 T; 67-126 T.)

QUANTITY: 115,160 lbs. and 62,620 lbs. at Ottawa Lake, Mich.

SHIPPED: 6-21-62, from Maumee, Ohio, by Lansing Grain Co., and 6-25-62, from Toledo, Ohio, by Lansing Grain Co.

LIBELED: 6-25-62 and 7-9-62, E. Dist. Mich.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-19-62. Consent—claimed by Lansing Grain Co., Lansing, Mich., and reconditioned.

29430. Wheat. (F.D.C. No. 47785. S. No. 67-086 T.)

QUANTITY: 108,000 lbs. at Ottawa Lake, Mich.

SHIPPED: 6-27-62, from Maumee, Ohio, by Bad Axe Grain Co.

LIBELED: 6-28-62, E. Dist. Mich.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-8-62. Consent—claimed by Bad Axe Grain Co., Bad Axe, Mich., and reconditioned.

29431. Wheat. (F.D.C. No. 49043. S. No. 33-997 X.)

QUANTITY: 85,200 lbs. at Duluth, Minn.

SHIPPED: 6-19-63, from Manvel, N. Dak., by Manvel Farmers Union Elevator Co.

LIBELED: 7-15-63, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 7-29-63. Consent—claimed by Manvel Farmers Union Elevator Co. and denatured for use as animal feed.

29432. Wheat. (F.D.C. No. 49262. S. No. 34-627 X.)

QUANTITY: 119,700 lbs. at Superior, Wis.

SHIPPED: 7-23-63, from Portland, N. Dak., by Portland Farmers Elevator Co.

LIBELED: 8-5-63, W. Dist. Wis.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 8-13-63. Consent—claimed by Portland Farmers Elevator Co., and denatured.

29433. Wheat. (F.D.C. No. 49402. S. No. 60-115 X.)

QUANTITY: 70,200 lbs. at Kansas City, Mo.

SHIPPED: 9-17-63, from Leoti, Kans., by Norris Grain Co.

LIBELED: 10-1-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 10-8-63. Consent—claimed by Norris Grain Co. Reconditioned; 7,380 lbs. segregated as unfit.

29434. Wheat. (F.D.C. No. 49425. S. No. 60-190 X.)

QUANTITY: 123,000 lbs. at Kansas City, Mo.

SHIPPED: 9-27-63, from Wheeler, Kans., by Wheeler Equity Exchange.

LIBELED: 10-18-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 11-4-63. Consent—claimed by Cargill, Inc. Reconditioned and segregated; 11,490 lbs. denatured.

29435. Wheat. (F.D.C. No. 49550. S. No. 51-270 X.)

QUANTITY: 102,000 lbs. at Spokane, Wash.

SHIPPED: 11-14-63, from Billings, Mont., by Midland Feed Co.

LIBELED: 11-22-63, E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 12-10-63. Consent—claimed by Coast Trading Co., and denatured for use as animal feed.

29436. Wheat. (F.D.C. No. 49301. S. Nos. 35-609 X, 64-207 X.)

QUANTITY: 105,000 lbs. at Minneapolis, Minn.

SHIPPED: 8-15-63, from Powers Lake, N. Dak., by Farmers Equity Elevator Co.

LIBELED: 9-6-63, Dist. Minn.

CHARGE: 402(a)(3)—contained musty and moldy wheat when shipped.

DISPOSITION: 12-18-63. Consent—claimed by Farmers Equity Elevator Co. After feeding tests on poultry had been conducted in accordance with requirements of Food and Drug Administration, the article was released for use as poultry feed only.

CONFECTIONERY AND SUGAR**CONFECTIONERY**

29437. Candy. (F.D.C. No. 47323. S. No. 15-354 T.)

INDICTMENT RETURNED: 7-13-62, N. Dist. Tex., against Novelty Peanut Co., a corporation, Dallas, Tex., Charles C. Bennett, president, and William M. Wilkins, vice president.

SHIPPED: 1-8-62, from Dallas, Tex., to Louisville, Ky.

LABEL IN PART: (Ctns.) "Coconut Dunes Novelty Peanut Co. Dallas."

CHARGE: 402(a)(3)—contained rodent hairs; and 402(a)(4)—prepared and packed under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 10-26-62. Corporation—\$500 fine; each individual—\$250 fine.

29438. Preserved ginger. (F.D.C. No. 46824. S. No. 49-363 T.)

QUANTITY: 1,100 lbs., in unlabeled casks of 224 lbs. each, at South San Francisco, Calif.

SHIPPED: 10-25-60, from central Hong Kong.

LIBELED: 12-1-61, N. Dist. Calif.

CHARGE: 402(a)(3)—contained *Drosophila* flies while held for sale.

DISPOSITION: 1-8-62. Default—destruction.

SUGAR

29439. Sugar. (F.D.C. No. 49816. S. No. 50-112 A.)

QUANTITY: 31 100-lb. bags, at Detroit, Mich., in possession of Health Food Distributors, Inc.

SHIPPED: 1-21-64, from Gary, Ind.

LIBELED: 3-4-64, E. Dist. Mich.

CHARGE: 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-27-64. Consent—claimed by Health Food Distributors, Inc., Detroit, Mich., and reconditioned.

DAIRY PRODUCTS**BUTTER**

29440. Butter. (F.D.C. No. 47644. S. No. 40-169 V.)

QUANTITY: 14 60-lb. ctns. at New York, N.Y.

SHIPPED: 9-22-62, from Austinville, Iowa, by Austinville Creamery.

LABEL IN PART: (Ctn.) "Distributed by Zenith Godley Co. N.Y. * * * Churn No. 8 * * * Creamery Butter Keep Refrigerated The Name Tells The Grade Cremoland Sweet Cream Butter."

RESULTS OF INVESTIGATION: Investigation showed that filthy cream had been used in the manufacture of Churn No. 8 butter.

LIBELED: 10-10-62, S. Dist. N.Y.

CHARGE: 402(a)(3)—contained a filthy substance when shipped.

DISPOSITION: 11-7-62. Default—destruction.

29441. Butter. (F.D.C. No. 47649. S. No. 23-311 X.)

QUANTITY: 17 64-lb. ctns. at Denver, Colo.

SHIPPED: 7-1-63, from Lusk, Wyo., by Kilmer Creamery.

LABEL IN PART: (Ctn.) "Creamery Butter."

LIBELED: 7-19-63, Dist. Colo.

CHARGE: 402(b)(2)—when shipped, a product containing less than 80 percent by weight of milk fat had been substituted for butter.

DISPOSITION: 8-26-63. Consent—claimed by Kilmer Corp. of Lusk, Wyo., and reconditioned.

CHEESE

29442. Cheddar cheese. (Inj. No. 395. S. No. 54-538 R.)

PETITION FILED: 11-8-61, Dist. S. Dak., against Dakota Cheese Co., a corporation, Pollock, S. Dak., and Robert R. Richardson, plant manager, to show cause why they should not be punished for criminal contempt for violation of the permanent injunction which had been entered against them on 1-11-61 (see food notice of judgment No. 27096).

ALLEGED VIOLATIONS: On 6-17-61, adulterated cheddar cheese was caused to be shipped in interstate commerce by the defendants from Pollock, S. Dak., to New Ulm, Minn., which act was in violation of the terms of the decree of permanent injunction by reason of the shipment of adulterated cheddar cheese and was further in violation of the terms of the decree of permanent injunction in that the cheddar cheese was manufactured at the defendants' cheese factory at Pollock, S. Dak., without complying with the requirement of the injunction that such measures be taken as would insure acceptance of clean milk, free of sediment and other foreign matter, and the rejection of other milk.

CHARGE: 402(a)(3)—when shipped, the article consisted in part of a filthy substance and had been manufactured from filth-contaminated, dirty, and otherwise unfit milk.

PLEA: Guilty.

DISPOSITION: 1-16-62. Corporation—\$300 fine; individual—\$100 fine.

29443. Cheddar cheese and flour. (F.D.C. No. 49715. S. Nos. 61-743/4 X.)

QUANTITY: 74 20-lb. cases of cheddar cheese, and 260 25-lb. bags of flour at Liberal, Kans., in possession of Ideal Food Stores.

SHIPPED: Between 10-23-63 and 12-4-63, the cheese from Springfield, Mo., and the flour from Amarillo, Tex.

LIBELED: 1-9-64, Dist. Kans.

CHARGE: 402(a)(3)—while held for sale, cheddar cheese was rodent-gnawed and contained mold; and 402(a)(4)—the cheddar cheese had been held under insanitary conditions.

402(a)(3)—while held for sale, the flour contained rodent urine.

DISPOSITION: 3-13-64. Default—destruction.

MISCELLANEOUS DAIRY PRODUCTS

29444. Nonfat dry milk. (F.D.C. No. 49323. S. No. 60-467 X.)

QUANTITY: 50 50-lb. bags, at Kansas City, Mo.

SHIPPED: 4-9-63, from Mason City, Iowa.

LIBELED: 9-17-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained insects and insect parts while held for sale.

DISPOSITION: 2-10-64. Default—destruction.

29445. Nonfat dry milk solids. (F.D.C. No. 49671. S. No. 65-323 X.)

QUANTITY: 235 100-lb. bags at Atlanta, Ga.

SHIPPED: 10-31-63, from Watertown, Wis., by Wm. Fitzgerald Milk Products Corp.

LABEL IN PART: (Bag) "Buttercup Brand Extra Grade Low Heat * * * Distributed by Wm. Fitzgerald Milk Products Corp., Watertown, Wisconsin * * * Extra Grade Nonfat Dry Milk Solids."

RESULTS OF INVESTIGATION: Investigation indicated that the article consisted of equipment cleanout, scorched milk, and floor sweep material, and that it had been originally bagged, labeled, and sold as animal feed but subsequently re-bagged by the shipper and sold as "Extra Grade" for human food use.

LIBELED: 1-7-64, N. Dist. Ga.

CHARGE: 402(a)(3)—When shipped, contained hair, pieces of wood, metal fiber, sand, grit, lint and other nondescript material; and 403(a)—the label statement "Extra Grade" was false and misleading as applied to a product containing hair, pieces of wood, pieces of metal fiber, sand, grit, lint and other nondescript material.

DISPOSITION: 2-11-64. Default—ordered destroyed, or delivered to a Government institution for use as animal food after being denatured.

EGGS

29446. Frozen eggs. (F.D.C. No. 47967. S. No. 4-917 T.)

QUANTITY: 92 30-lb. cans at Arlington, Va.

SHIPPED: 7-31-62 and 8-3-63, from Baltimore, Md., by Smelkinson Bros. Corp.

LABEL IN PART: "Buffington & Ward, Inc. * * * Frozen Whole Eggs * * * Baltimore, Md."

LIBELED: 8-13-62, E. Dist. Va.

CHARGE: 402(a)(3)—contained decomposed eggs when shipped.

DISPOSITION: 9-25-62. Consent—claimed by Smelkinson Bros. Corp. Segregated; 21 cans denatured.

29447. Frozen eggs. (F.D.C. No. 48967. S. No. 8-034 V.)

QUANTITY: 2,400 30-lb. cans at Roxbury, Mass.

SHIPPED: Between 11-1-62 and 4-23-63, from Derry and Salem, N.H., and Somerville, Mass.

RESULTS OF INVESTIGATION: The frozen eggs had been prepared and packed locally from shell eggs shipped as above.

LIBELED: 5-17-63, Dist. Mass.

CHARGE: 402(a)(3)—contained decomposed eggs while held for sale.

DISPOSITION: 8-27-63. Consent—claimed by Saul F. Fleishman, t/a Fleishman & Co., of Boston, Mass., and denatured after attempts to recondition proved to be unsuccessful.

29448. Frozen eggs. (F.D.C. No. 49066. S. No. 19-964 V.)

QUANTITY: 313 30-lb. cans at Dallas, Tex.

SHIPPED: 5-7-63, from Hope, Ark., by Delight Certified Egg Farms.

LABEL IN PART: (Can) "Whole Eggs * * * Packed by Delight Egg Farms Inc., Hope, Arkansas."

LIBELED: On or about 6-24-63, N. Dist. Tex.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 10-4-63. Consent—claimed by Delight Certified Egg Farms, Inc., of Hope, Ark., and denatured.

29449. Frozen eggs. (F.D.C. No. 49067. S. Nos. 19-963 V, 61-236 V.)

QUANTITY: 201 30-lb. cans at Dallas, Tex.

SHIPPED: On unknown dates, as shell eggs, from Hope, Ark.

LIBELED: On or about 6-24-63, N. Dist. Tex.

CHARGE: 402(a) (3)—contained decomposed eggs while held for sale.

DISPOSITION: 10-4-63. Consent—claimed by Delight Certified Egg Farms, Inc., of Hope, Ark., and denatured.

29450. Frozen eggs. (F.D.C. No. 49225. S. No. 3-485 X.)

QUANTITY: 528 30-lb. cans at Washington, D.C.

SHIPPED: 7-23-63, from Itta Bena, Miss., by J. O. Russell, Southern Farms.

LABEL IN PART: (Can) "Packed by Southern Farms Itta Bena, Mississippi Whole Eggs."

LIBELED: 8-14-63, Dist. Columbia.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 11-22-63. Consent—claimed by Southern Farms, and segregated.

29451. Frozen eggs. (F.D.C. No. 49331. S. Nos. 32-074/5 X.)

QUANTITY: 183 30-lb. cans, at Phoenix, Ariz., in possession of Desert Brand Foods, Inc.

SHIPPED: The article was prepared from shell eggs which were shipped during the period from 3-1-63 through 8-15-63, from the State of California by the dealer.

LIBELED: 9-12-63, Dist. Ariz.

CHARGE: 402(a) (3)—contained decomposed eggs while held for sale.

DISPOSITION: 1-16-64. Consent—claimed by Desert Brand Foods, Inc. Segregated; 2 cans denatured.

29452. Frozen eggs. (F.D.C. No. 49677. S. No. 65-427 X.)

QUANTITY: 217 30-lb. cans, at Thomasville, Ga.

SHIPPED: 11-19-63, from Philadelphia, Pa., by William H. Oldach, Inc.

LABEL IN PART: (Can) "Packed by Southern Farms Itta Bena, Mississippi Whole Eggs."

LIBELED: 1-7-64, M. Dist. Ga.

CHARGE: 402(a) (3)—contained decomposed eggs when shipped.

DISPOSITION: 3-25-64. Default—destruction.

FEEDS AND GRAINS

29453. Canned dog food and canned cat food. (F.D.C. No. 45964. S. Nos. 1-207 R, 1-899 R, 2-223 R.)

INFORMATION FILED: 7-17-61, M. Dist Ga., against Fabro, Inc., Athens, Ga.

SHIPPED: Between 5-2-60 and 7-13-60, from the State of Georgia to the States of Florida, North Carolina, and South Carolina.

LABEL IN PART: "Henny Pen * * * Dog Food * * * Contents 1 Pound Packed by Fabro, Inc. Athens, Ga. * * * Guaranteed Analysis Crude Protein . . . (Min.) . . . 11.00% Crude Fat . . . (Min.) . . . 2.00%"; and "SWITCH Nutritious Diet CAT FOOD * * * Net Weight 15 Oz. Packed by Fabro of Georgia, Inc., Atlanta, Ga. * * * Guaranteed Analysis: Minimum Crude Protein . . . 12.00%."

CHARGE: Dog food shipped to Florida, 402(b)(1)—when shipped, a valuable constituent, protein, had been in part omitted (count 1); and 403(a)—the label statement "Guaranteed Analysis Crude Protein . . . (Min.) . . . 11.00%" was false and misleading since the food contained less than 11 percent of protein (count 2).

Dog food shipped to South Carolina, 402(b)(1)—when shipped, valuable constituents, protein and fat, had been in part omitted (count 3); and 403(a)—the label statement "Guaranteed Analysis Crude Protein . . . (Min.) . . . 11.00% Crude Fat . . . (Min.) . . . 2.00%" was false and misleading since the food contained less than 11 percent of protein and less than 2 percent of fat (count 4);

Cat food shipped to North Carolina, 402(b)(1)—when shipped, a valuable constituent, protein, had been in part omitted from the article (count 5); and 403(a)—the label statement "Guaranteed Analysis: Minimum Crude Protein . . . 12.00%" was false and misleading since the food contained less than 12 percent of protein (count 6).

PLEA: Not guilty to all counts initially; on 12-2-63, nolo contendere to count 2 only.

DISPOSITION: On 12-4-61, the defendant filed a motion to dismiss counts 1, 3, and 5 for failure to state an offense. Thereafter the court rendered the following opinion authorizing the dismissal of those counts:

BOOTLE, District Judge: "For reasons hereinafter set forth, defendant's motion to dismiss Counts I, III, and V of the information is hereby granted.

"Defendant is charged in a six count information with violations of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. § 301 et seq. Counts I, III and V of this information charge violations of § 402(b)(1) of the Act, 21 U.S.C.A. § 342(b)(1), which provides as follows:

'A food shall be deemed to be adulterated—(b)(1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom;'

The information charges that the defendant, a manufacturer of dog and cat food, violated the above statute in that it shipped into interstate commerce food which was adulterated within the meaning of the statute in that 'valuable constituents'—in two counts protein, and in one count protein and fat—have been in part omitted therefrom. Defendant moved to dismiss the above enumerated counts upon the grounds that there is no definite, certain or ascertainable standard set forth in section 402(b)(1) of the Act by which it can be determined whether 'a valuable constituent' has been in part omitted from the food; that the statute as applied deprives the defendant of due process of law in violation of the Fifth Amendment to the Federal Constitution as it is too vague, indefinite and uncertain to state an offense; and that the

statute violates the Sixth Amendment to the Federal Constitution by failing to inform the defendant of the nature and cause of the accusation.

"By 21 U.S.C.A. § 341, the Secretary of Health, Education, and Welfare is authorized to

'promulgate regulations fixing and establishing for any food, under its common usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container.'

No such standards of identity or quality have been promulgated by the Secretary for the purpose of determining what constitutes 'valuable constituent(s)' in dog food or cat food, nor in what amounts or proportions said foods shall contain such 'valuable constituent(s)'. Thus the validity of the statute as here applied must rest upon the language of the statute itself, without benefit of any standard or regulation of the Secretary.

"The government contends that the constitutionality of the statute as applied should not be determined on a motion to dismiss. In *United States v. Petrillo*, 332 U.S. 1, 5 (1947), the Supreme Court said:

'We have consistently refrained from passing on the constitutionality of a statute until a case involving it has reached a stage where the decision of a precise constitutional issue is a necessity.'

Nevertheless, in that case the court in considering a motion to dismiss, passed upon the validity of a statute, stating that the motion to dismiss

'squarely raises the question of whether the section invoked in the indictment is void in toto, barring all further actions under it, in this, and every other case.' 332 U.S. at 6.

The Court held further:

'Many questions of a statute's constitutionality as applied can best await the refinement of the issues by pleading, construction of the challenged statute and pleadings, and sometimes, proof. . . . But no refinement or clarification of issues which we can reasonably anticipate would bring into better focus the question of whether the contested section is written so vaguely and indefinitely that one whose conduct it affected could only guess what it meant.' 332 U.S. at 6.

The issue in the present case is sufficiently clear to warrant passing upon the validity of the statute in question without the necessity of the introduction of further pleadings or evidence. '[T]here is . . . [no] reasonable likelihood that the production of evidence will make the answer to the questions clearer' on the motion now before the court. *Borden's Farm Products Co. v. Baldwin*, 293 U.S. 194, 213 (1934). The issue now before the court is the constitutionality of section 402(b)(1) of the Federal Food, Drug and Cosmetic Act as applied in this case. The answer to that question is apparent upon the face of the statute itself.¹ A trial can give the court no better information than it now has as to whether this statute, absent any regulations promulgated by the Secretary concerning the subject-matter of the information, contains sufficiently definite standards and definition of the crime alleged to have been committed to withstand the attack now waged against it. *Boyce Motor Lines v. United States*, 342 U.S. 337, 345 (1952).

"The question of vagueness or uncertainty in both civil and criminal statutes has been considered by the courts in a multitude of cases. Out of these have arisen a series of tests or standards of construction which are to be applied in determining the constitutionality of such a statute or its application. In order for a penal statute to be valid,

'the crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, *in advance*, what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things, and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon the one conception of its requirements and the courts upon another.' *Connally v. General Construction Co.*, 269 U.S. 385, 393 (1926). (Emphasis added.)

The language of the statute should convey 'sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices.' *United States v. Petrillo*, *supra* at 8.

¹ Cf. *United States v. Foster*, 80 F. Supp. 479, 484 (S.D.N.Y. 1948).

'[I]t must be sufficiently definite to give notice of the required conduct to one who would avoid its penalties, and to guide the judge in its application and the lawyer in defending one charged with its violation. But few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.' *Boyce Motor Lines v. United States*, *supra*, at 340.

"Applying these standards of construction to section 402(b) (1) of the Federal Food, Drug and Cosmetic Act, the conclusion is inescapable that the language of the statute, unclarified by appropriate regulations of the Secretary, is too vague and indefinite to be sanctioned as a penal statute. The statute furnishes no definition of what constitutes a 'valuable constituent', nor can a satisfactory definition be found in the words themselves. The word 'valuable' is a relative term susceptible of many interpretations and of no definite or absolute meaning. That which is considered valuable by one court or jury might not be considered so by another. (*Connally v. General Construction Co.*, *supra* at 392). A criminal statute should contain a definite, certain, immutable standard of guilt, and this standard should not be left to the variant views of different courts and juries. The statute should inform the accused of the nature and cause of the accusation against him. *United States v. Cohen Grocery Co.*, 255 U.S. 81, 87 (1921).² Nor does the statute establish any standard as to what constitutes 'in whole or in part' of a 'valuable constituent'. Assuming, *arguendo*, that protein is a valuable constituent within the definition of the statute, how is the defendant to determine what amount of protein it should consider as the minimum amount required by the statute? The information in Count I³ alleges that the defendant had labeled the dog food as follows:

'Henny Pen * * * Dog Food * * * Contents 1 Pound Packed by Fabro, Inc. Athens, Ga. * * * Guaranteed Analysis Crude Protein . . . (Min.) . . . 11.00%'

and that a valuable constituent, protein, had been in part omitted therefrom. The only standard shown by the information or by the statute upon which it is based is that the dog food showed upon its label that it contained 11% protein when in fact it contained less. Thus it attempts to make the product serve as its own standard, and this the said product cannot be made to do. *United States v. 88 Cases, More or Less, Etc.*, 187 F. 2d 967, 972, 973 (3d Cir. 1951).

"The language of the Supreme Court in *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939), quoting in part from *Connally v. General Construction Co.*, *supra*, at 391, is appropriate here.

'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law."'

"The court is not unmindful of the holding of the court of appeals for this circuit in *United States v. 36 Drums . . . Pop'n Oil*, 164 F. 2d 250 (5th Cir. 1947), wherein the court said, at page 252 of the opinion:

² This is particularly true in a case of this kind where it is not necessary to allege or prove guilty knowledge or intent (*United States v. Hohensee*, 243 F. 2d 367 (3d Cir. 1957), cert. denied 353 U.S. 976), and where statutory vagueness cannot be aided by the consideration that only those who knowingly transgress can be punished. Cf. *Boyce Motor Lines v. United States*, *supra*.

³ Counts III and V of the information contain similar allegations.

'To conclude that a food for which a standard of identity has not been promulgated is exempt from the economic adulteration provisions of the Act would result in rendering inoperative all of 21 U.S.C.A. § 342(b). The Administration is not required to promulgate definitions and standards of identity for foods under any and all conditions. Administrative selectivity in such standardization is a part of his discretion and responsibility. To permit a class of foods not so selected to escape other applicable provisions of the law would create a loophole which the Act sought to avoid.'

In that case, however, the court was applying 21 U.S.C.A. § 342(b) (3) and (4), not § 342(b) (1). And this court interprets that case as holding that the Secretary is not required to promulgate standards for every class of food sought to be regulated under § 402 of the Act, provided the statute itself sets forth sufficient standards to meet the requirements of the Fifth and Sixth Amendments to the Constitution.

"The essential purpose of the 'void for vagueness' doctrine is to warn individuals of the criminal consequences of their conduct,"⁴ and in order for an effective warning to be conveyed, there must be a sufficient standard of conduct promulgated. The standard of the statute here under attack is 'so vague and indefinite as to be really no rule or standard at all.'⁵ It does not give to the defendant fair warning as to what conduct on its part will subject it to criminal prosecution, (*United States v. Cardiff*, 344 U.S. 174, 176 (1952)), and the enforcement of it in its present form, absent any regulations promulgated by the Secretary as to the meaning of the phrases 'valuable constituent' and 'in whole or in part' as here applied would be a denial of due process in violation of the Fifth Amendment, and violative of the Sixth Amendment in that it does not inform the accused of the nature and cause of the accusation against him. As the Supreme Court said in *United States v. Cardiff, supra*:

'The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited. Words which are vague and fluid . . . may be as much of a trap for the innocent as the ancient laws of Caligula.' 344 U.S. at 176.

"Accordingly, the court concludes that the statute, 21 U.S.C.A. § 342(b) (1), absent any regulations promulgated by the Secretary pertaining to the subject matter involved, does not meet the requirements of the Fifth and Sixth Amendments to the Constitution. Let counsel for defendant prepare and submit an order dismissing Counts I, III and V of the information."

On 6-6-63 through 6-11-63, counts 2, 4, and 6 were tried before a jury. On 6-11-63, the jury having notified the court that they could not reach a decision, the court declared a mistrial. On 6-17-63, within 5 days after the discharge of the jury, the defendant renewed its motion for acquittal which had been made during the trial at the close of the presentation of evidence by the Government and at the close of presentation of all the evidence.

The motion enumerated the following grounds:

1. That the Government did not prove the allegations respecting venue, namely, that the defendant, did, within the Athens Division of the Middle District of Georgia, cause to be introduced and delivered for introduction into interstate commerce at Athens, State of Georgia, the article involved.

2. The form, manner, and nature of the misbranding alleged in counts 2, 4, and 6, and the form, manner, and nature of the misbranding allegedly shown by the evidence presented upon the trial of the case, did not bring this case within the meaning and application of the provisions of 403(a) as alleged and charged by the Government, but did, as shown by the information and as shown by the evidence presented upon the trial of the case, bring the case within the meaning and application of the provisions of 403(e) which relates

⁴ *Jordan v. De George*, 341 U.S. 223, 230 (1951).

⁵ See *Champlin Refining Co. v. Corporation Comm.*, 286 U.S. 210, 243 (1932).

to food in package form and a misbranding thereof by and through statements made on the labeling respecting weight, measure, or numerical count of the content of such packages; that if the subject packages were misbranded in the form, manner, and nature alleged in counts 2, 4, and 6 of the information, the packages could only be misbranded under the terms of 403(e), but that the Government had neither alleged nor sought to prove nor proven any misbranding, violation by defendant of the provisions of 403(e), or of the provisions of any regulations established by the Secretary pursuant to authority conferred therein respecting reasonable variations in stated weight, measure, or numerical count of the content of such food packages.

3. To apply the provisions of 403(a), which makes no provision for allowance of reasonable variations in the measure, weight, or numerical count of the content of food packages stated on the labeling thereof, to the defendant in this case and deny to the defendant the application of and protection afforded by the provisions of 403(e), deprived defendant of rights guaranteed under the Fifth Amendment to the Constitution of the United States which provides in part:

“No person shall . . . be deprived of life, liberty, or property without due process of law: . . .” because, to apply the statute to the defendant upon the facts alleged in the information and shown in this case by the evidence was arbitrary and unreasonable, unjust, unfair, and harsh, rested upon no rational basis, and thus denied defendant due process of law, and further denied to the defendant the equal protection of, and impartial administration of the law, and was discriminatory in that 403(e), to the contrary, provided for allowance of reasonable variations in the measure or numerical count of the content of food packages stated on the labeling thereof, and no rational or reasonable basis whatever existed for distinguishing and excluding therefrom and from the protection thereof, of statements on the labeling of food packages of the measure or numerical count of the content of such packages when the same was stated in the form, manner, and unit of measure or numerical count involved in this case.

4. That 403(a) was a further unconstitutional deprivation of rights guaranteed under the Fifth Amendment, as applied to the facts, since the statute was too vague, indefinite, and uncertain to state an offense, or to constitute a standard of criminal conduct, or to put the defendant on notice of what would constitute an offense under the statute, for it did not fix nor relate to any definite, certain or ascertainable standard respecting the words “false or misleading in any particular” with which the defendant was required to comply.

5. That 403(a) was an unconstitutional deprivation of the right under the Sixth Amendment to be informed of the nature and cause of the accusation since the statute was so vague, indefinite, and uncertain by reason of its failure to fix or relate to a definite, certain, or ascertainable standard respecting the words “false and misleading in any particular” that it failed to sufficiently inform the defendant of the nature and cause of the accusation and of the standard of conduct required of defendant in order to avoid violation of same.

6. That the evidence offered upon the trial of the case was not sufficient to take the case to the jury.

On 11-29-63, the court issued the following order :

BOOTLE, *District Judge*:

ORDER ON MOTION FOR JUDGMENT OF ACQUITTAL

"The trial of this case resulted in a hung jury and the court entered an order declaring a mistrial. Subsequently, defendant filed a motion for judgment of acquittal on the ground that venue had not been proven and upon other grounds.

"Proof of venue as a jurisdictional fact may be shown by circumstantial evidence as well as by direct evidence, and the venue may be deemed proven by inference drawn by the jury from the circumstantial evidence presented at time of trial, or from the record as a whole. *Holdridge v. United States*, 282 F. 2d 302 (8 Cir. 1960). *Weaver v. United States*, 298 F. 2d 496, 497, 498 (5 Cir. 1962). See also *George v. United States*, 125 F. 2d 559 (D.C. Cir. 1942); *Wallace v. United States*, 243 F. 300, 306 (7 Cir. 1917); *United States v. Karavias*, 170 F. 2d 968, 970 (7 Cir. 1948). It has been held that venue need not be proven beyond a reasonable doubt. *Dean v. United States*, 246 F. 2d 335, 338 (8 Cir. 1957); *Morehouse v. United States*, 96 F. 2d 468 (8 Cir. 1938).

"The Government contends that venue was shown by (1) a stipulation¹ entered into by defendant and the Government prior to trial and (2) Government's exhibits 4 and 5 which were admitted into evidence and which were two labels from cans of dog food containing the following language 'Packed by Fabro, Inc., Athens, Georgia.'

"The Government contends that when the stipulation is read in connection with the allegation in the information that the acts alleged to be criminal were committed 'within the Athens Division of the Middle District of Georgia', 'it becomes clear that the articles of food referred to in those counts are the ones which were introduced into interstate commerce at Athens, State of Georgia.' This contention is untenable, for the stipulation does not stipulate where the articles of food were introduced or delivered for introduction into interstate commerce.

"Let us examine the evidence adduced upon the trial of the case in order to determine if it was shown that a violation occurred within the Middle District of Georgia. The evidence showed that defendant, a Delaware corporation, has two animal food plants, one in Atlanta which is the home office and one in Athens and that defendant also has warehouses in Atlanta and Athens. Title 21 U.S.C.A. § 331(a) proscribes 'the introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.'

"Defendant is charged in counts II² and IV of the information with introducing or delivering for introduction into interstate commerce shipments of 'Henny Pen' dog food for delivery to Jacksonville, Florida and Greenville, South Carolina, respectively, which were allegedly misbranded within the meaning of 21 U.S.C.A. § 343(a) in that they contained less protein, as to count II, and less protein and fat as to count IV than was guaranteed by the manufacturer on the label.

"Food and Drug Administration Inspectors Billy B. Ashcraft and J. W. Montjoy picked up samples of the Jacksonville and Greenville shipments, respectively. Each can of 'Henny Pen' dog food picked up and tested had printed on the label 'Packed by Fabro, Inc., Athens, Ga.' The case containing the cans picked up at Jacksonville had printed on it 'Fabro, Incorporated, Athens, Georgia'. The court does not see among the exhibits any case relating to the Greenville shipment.

"Defendant contends, in effect, that because the Government did not introduce evidence showing that the Jacksonville and Greenville shipments were made directly from the Athens plant or warehouse that it has not proven venue, for the shipments, for all the evidence shows, might have been made from the Atlanta warehouse outside the jurisdiction of this court. While it is true that there is a warehouse in Athens and Atlanta there is no evidence that the dog food was ever shipped to Atlanta. The circumstances that Atlanta was the site of the home office; that the labels on the dog food in the two shipments were marked 'Packed by Fabro, Inc., Athens, Ga.'; that the cans of cat food alleged to be misbranded in count VI had printed on the labels

¹ The stipulation, in part, stipulates "that the articles of food referred to in counts II, IV, and VI of the information were delivered into interstate commerce by defendant"

² Counts I, III, and V were dismissed before trial, leaving counts II, IV, and VI.

'Packed by Fabro of Georgia, Inc., *Atlanta, Ga.*'; and that the case containing the Jacksonville cans had printed on it 'Fabro, Incorporated, *Athens, Georgia*' would authorize the jury to conclude that the dog food was packed where stated on the labels, in Athens.

"It follows that the introduction or *delivery for introduction* into interstate commerce of the dog food took place at the Athens branch. Even if the dog food was shipped to the Atlanta warehouse and from there to Jacksonville and Greenville, the *delivery for introduction* into interstate commerce occurred in Athens for when defendant manufactured the dog food in Athens and delivered it to the Atlanta warehouse, if it did so, it was contemplated that from Atlanta at least a substantial portion of it would be shipped in interstate commerce.

"Under these circumstances and this evidence, the court would not be authorized to rule that venue has not been proven as to Counts II and IV.

"The labels on the cat food alleged in count VI to be misbranded have printed on them 'Packed by Fabro of Georgia, Inc., *Atlanta, Ga.*' There is no evidence that this cat food ever entered the middle district of Georgia. Therefore it appears that as to count VI a judgment of acquittal should be entered. All of the other grounds of the motion have been considered and found to be without merit.

"SO ORDERED, this 29 day of November, 1963."

On 12-2-63, counts 1, 3, 5, and 6 having been previously dismissed upon order of the court, count 4 having been dismissed upon motion of the Government, and the defendant having pleaded nolo contendere to count 2, the defendant was fined \$100.

29454. Alfalfa hay. (F.D.C. No. 49498. S. Nos. 50-702 X, 78-261 X.)

QUANTITY: 158 tons at Auburn, Calif.

SHIPPED: Between 8-13-63 and 9-18-63, from Yerington, Nev., by George N. Cooper.

LIBELED: 11-6-63, N. Dist. Calif.

CHARGE: 402(a)(2)(B)—the article was a raw agricultural commodity and, when shipped, contained pesticide chemicals, namely, DDT (DDD, DDE) and heptachlor epoxide, which were unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for DDT (DDD, DDE) on alfalfa hay has been prescribed by regulations, and since the quantity of heptachlor epoxide on the article was not within the limits of the tolerance for such pesticide chemical on alfalfa prescribed by regulations.

DISPOSITION: 3-20-64. Consent—claimed by George Cooper and denatured for use as feed for nonfood producing animals.

29455. Vitamin-mineral supplement feed. (F.D.C. No. 49263. S. No. 76-953 V.)

QUANTITY: 35 25-lb. bags, at Cedar Rapids, Iowa.

SHIPPED: Prior to 4-4-63, from Peoria, Ill.

RESULTS OF INVESTIGATION: Examination showed that the article contained approximately 30 percent of the declared amount of vitamin D₃.

LIBELED: 8-5-63, N. Dist. Iowa.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent vitamin D₃ had been in part omitted or abstracted therefrom; and 403(a)—the label statement "Vitamin D₃ 190 I.C. Units Per Gram Equal to 86,000 I.C. Units Per Pound" was false and misleading.

DISPOSITION: 1-10-64. Default—destruction.

29456. Medicated feed. (F.D.C. No. 49717. S. No. 63-565 X.)

QUANTITY: 40 50-lb. bags, at Burkhardt, Wis., in possession of Burkhardt Co-op. Association.

SHIPPED: 12-12-63, from Minneapolis, Minn., by Midland Cooperatives, Inc.

LABEL IN PART: (Bag) "Midland Products Free Choice 27 Ration Medicated For increasing egg production in laying hens * * * Active Drug Ingredient Arsanilic Acid 0.025% Guaranteed Analysis * * * Ingredients * * * Manufactured for Midland Cooperatives, Inc., Minneapolis, Minnesota, * * * Feeding Directions Warning! Feed this medicated supplement to laying hens in the proportion of 1 part of supplement to 2 parts of grain. The consumption of supplement and grain in self feeders should be closely observed to see that the consumption of supplement is no more than one-third of the total daily feed intake so that the total feed intake of Arsanilic Acid is not greater than 0.01%."

RESULTS OF INVESTIGATION: Analysis showed that the article contained .0245 percent of arsanilic acid.

LIBELED: 1-15-64, W. Dist. Wis.

CHARGE: 402(a)(2)(C)—when shipped, the article contained a food additive, namely, arsanilic acid, which at the level of .0245 percent is unsafe under the directions for use for feeding separately with grain within the meaning of 409, since it and its use and intended use were not in conformity with a regulation or exemption in effect pursuant to 409.

DISPOSITION: 2-26-64. Default—destruction.

29457. Bicon medicated feed. (F.D.C. No. 49071. S. No. 45-388 V.)

QUANTITY: 4 drums at Springdale, Ark., in possession of Lu Mar Laboratories.

SHIPPED: 3-5-63, from Charles City, Iowa.

LABEL IN PART: (Drum) "Lu Mar Bicon 100 Pounds For use as a growth stimulant, Stomachic Appetizer and to stimulate recovery after disease. Active Ingredients: * * * Arsenic Trioxide 10% * * * Manufactured For Lu-Mar Laboratories, Springdale, Arkansas * * * Caution Contains Arsenic * * * Directions for Chicks, Broilers, Fryers, Laying Birds, Poults, and Turkeys."

RESULTS OF INVESTIGATION: The article was relabeled as described above after its receipt at Springdale, Ark.

LIBELED: 6-7-63, W. Dist. Ark.

CHARGE: 402(a)(2)(C)—while held for sale, the article contained arsenic trioxide, a food additive, which was unsafe within the meaning of 409 since its use and intended use were not in conformity with a regulation or exemption in effect pursuant to 409.

The article was also alleged to be misbranded under the provisions of the law applicable to drugs as reported in notices of judgment on drugs and devices, No. 7621.

DISPOSITION: 7-15-63. Default—destruction.

29458. Medicated feed. (F.D.C. No. 48631. S. Nos. 10-004/7 V.)

QUANTITY: 45 50-lb. bags of Pre-starter Medicated Feed, 78 50-lb. bags of Medicated Broiler Mash, 18 50-lb. bags of Medicated Broiler Mash Crumbles, and 43 50-lb. bags of Medicated Broiler Mash pellets, at Butler, Pa., in possession of P. J. Oesterling & Son, Inc.

SHIPPED: The active drug ingredient was shipped on 2-13-62, from Teterboro, N.J.

LABEL IN PART: (Bag) "Sun Side Pre-Starter Medicated [or "Rapid Gro Broiler Mash Medicated," "Rapid Gro Broiler Mash Medicated * * CRUMBLES," or "Rapid Gro Broiler Mash Medicated * * * PELLETTED"] To aid in preventing outbreaks of coccidiosis. Also for promotion of growth and improved feed efficiency. Active Drug Ingredients: Amprolium * * * (Amprol) 0.0125% * * * Ingredients: Corn Meal, Alfalfa Meal, Soy Bean Oil Meal, Meat Scraps, Wheat Middlings, * * * and Antibiotic Feed Supplement * * * Manufactured by P. J. Oesterling & Son, Inc. Mills at Butler, Pa."

RESULTS OF INVESTIGATION: The Pellets contained approximately 45 percent of the label amount of amprolium, and the Crumbles, 4 percent. The articles were manufactured by the dealer from various ingredients including the active drug ingredient, amprolium.

LIBELED: 2-8-63, W. Dist. Pa.; libel amended 3-8-63.

CHARGE: 402(a)(2)(C)—while held for sale, the articles contained a food additive, namely, amprolium, which was unsafe within the meaning of 409, since it and its use or intended use were not in conformity with a regulation or exemption in effect pursuant to 409, since their labels failed to bear, as regulations required, adequate directions and warning for use, including a statement that such feeds may not be fed to laying hens.

The Crumbles and Pellets were also alleged to be adulterated under the provisions of the Act applicable to drugs as reported in notices of judgment on drugs and devices, No. 7719.

DISPOSITION: 4-11-63. Consent—claimed by P. J. Oesterling & Son, Inc., and released under bond to be brought into compliance with the law.

FISH AND SHELLFISH

29459. Anchovies. (F.D.C. No. 49648. S. Nos. 41-492/3 X.)

QUANTITY: 454 bundles, each containing 4 ctns. of 25 2-oz. cans of rolled fillets of anchovies, and 499 bundles, each containing 4 ctns. of 25 2-oz. cans of flat fillets of anchovies, at Jersey City, N.J.

SHIPPED: 4-25-63 and 5-23-63, from Portugal.

LIBELED: 1-8-64, Dist. N.J.

CHARGE: 402(a)(3)—contained decomposed fish fillets while held for sale.

DISPOSITION: 2-13-64. Default—destruction.

29460. Frozen halibut, salmon, and squid. (F.D.C. No. 48446. S. Nos. 39-389/93 V.)

QUANTITY: 23 ctns. containing a total of approximately 3,569 lbs. of halibut, 6 ctns. containing a total of approximately 696 lbs. of salmon, and 31 ctns. containing a total of approximately 1,540 lbs. of squid, at Monmouth Beach, N.J.

SHIPPED: Between 8-23-62 and 11-29-62, from New York, N.Y.

LIBELED: 1-4-63, Dist. N.J.

CHARGE: 402(a)(3)—contained decomposed fish while held for sale.

DISPOSITION: 2-11-63. Consent—claimed by Eastern Commission Co., Inc. The squid were destroyed and the other fish were ordered released for re-conditioning.

29461. Frozen shrimp. (F.D.C. No. 49987. S. No. 75-029 A.)

QUANTITY: 47 cases, each containing 10 6-lb. ctns., at Jay, Fla.

SHIPPED: 3-9-64, from Ponchatoula, La., by Malone Transport, Inc.

LABEL IN PART: (Case) "Shrimp Peeled & Deveined Froz. * * * Packed July 16, 63 [or "July 17, 63"] Goldhill Food Corp. Ponchatoula, La."

LIBELED: 4-21-64, N. Dist. Fla.

CHARGE: 402(a)(3)—contained decomposed shrimp when shipped.

DISPOSITION: 5-25-64. Default—destruction.

29462. Frozen breaded shrimp. (F.D.C. No. 49453. S. Nos. 47-363/4 X.)

QUANTITY: 1,026 cases, each containing 24 10-oz. pkgs., at Rock Island, Ill.

SHIPPED: 9-24-63 and 10-1-63, from Port Isabel, Tex., by Valley Frozen Foods, Inc.

LABEL IN PART: (Pkg.) "Dartmouth Frozen Breaded Shrimp * * * Distributed by Dartmouth Marketing Co., Inc., Chicago, Ill."

LIBELED: 11-20-63, S. Dist. Ill.

CHARGE: 402(a)(3)—contained *E. coli*. excessive coliforms, coagulase positive staphylococci, and a high total bacterial count; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-16-64. Default—destruction.

FRUITS AND VEGETABLES

CANNED FRUIT

29463. Canned peaches. (F.D.C. No. 49357. S. No. 16-232 X.)

QUANTITY: 355 cases, each containing 24 1-lb. 13-oz. cans, at Concord, Ga.

SHIPPED: Between 7-16-63 and 9-20-63, from Indianapolis, Ind. This was a return shipment.

LABEL IN PART: (Can) "Gold Crest Freestone Peaches Halves in Heavy Syrup Packed by Gold Crest Canning Company, Concord, Ga."

LIBELED: 9-26-63, N. Dist. Ga.

CHARGE: 403(g)(2)—when shipped, the label of the article failed to bear as required by the definition and standard of identity for canned peaches, the name of the optional packing medium present in such food, since its label bore the statement "in Heavy Syrup" and the article was packed in a medium which was not "Heavy Syrup."

DISPOSITION: 11-22-63. Consent—claimed by Gold Crest Canning Co. of Concord, Ga., for relabeling.

29464. Canned peaches. (F.D.C. No. 49769. S. No. 52-737 X.)

QUANTITY: 67 cases, each containing 24 1-lb. 13-oz. cans, at Portland, Beaverton, and Gladstone, Oreg.

SHIPPED: 9-14-63, from Wenatchee, Wash., by D & D Foods, Inc.

LABEL IN PART: (Can) "Treasure Gold Packed in Heavy Syrup Halves Yellow Elberta Freestone Peaches * * * Packed by D & D Foods, Inc. Wenatchee, Wash."

LIBELED: On or about 2-25-64, Dist. Oreg.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 4-13-64. Default—destruction.

FROZEN FRUIT

29465. Frozen whole strawberries and frozen sliced strawberries. (2 seizure actions). (F.D.C. Nos. 45816; 45830. S. Nos. 85-090 R; 85-089 R, 85-097 R.)

QUANTITY: 241 30-lb. cans of frozen sliced strawberries, and 172 30-lb. cans of frozen whole strawberries at Van Buren, Ark.

SHIPPED: 5-9-61, from Sallisaw, Okla.

RESULTS OF INVESTIGATION: The articles were shipped in bulk as above and processed and packed by Crawford County Farm Bureau Cooperative at Van Buren, Ark., and thereafter delivered to the dealer.

LIBELED: 5-31-61 and 6-8-61, W. Dist. Ark.

CHARGE: 402(a) (3)—contained decomposed and moldy strawberries while held for sale.

DISPOSITION: 8-7-61. Default—delivered to a public institution for use as animal feed.

VEGETABLES AND VEGETABLE PRODUCTS

29466. Green leafy vegetables. (Inj. No. 444.)

COMPLAINT FOR INJUNCTION FILED: 11-30-62, Dist. N.J., against Savino Ser-marini, Moorestown, N.J.

CHARGE: The complaint alleged that the defendant was engaged in operating an 80-acre farm on which he produced raw agricultural commodities such as turnip greens, mustard greens, collards, Swiss chard, dandelion greens, rape, and kale, which were distributed in interstate commerce, and were adulterated within the meaning of 402(a) (2) (B) in that the foods contained a pesticide chemical, namely, endrin, which was unsafe within the meaning of 408(a) since no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on such foods had been prescribed by regulations.

The complaint alleged also that the defendant was aware that his activities were in violation of the Act as a result of inspections of his farm and of the results of chemical analyses of samples of his products made by the Food and Drug Administration, but that he continued to ship adulterated foods.

DISPOSITION: On 11-30-62, a temporary restraining order was entered against the defendant, enjoining the defendant from introducing or causing to be introduced and delivering or causing to be delivered for introduction into interstate commerce, 1. turnip greens, mustard greens, collards, Swiss chard, dandelion greens, rape, kale, and any other article of food which bore the pesticide chemical endrin and was thereby adulterated (1) in that no tolerance or exemption from the requirement of a tolerance for such pesticide chemical on such foods had been prescribed by regulations or (2) in the case of cabbages, cottonseed, cucumbers, eggplant, peppers, potatoes, sugar beets, sugar beet tops, summer squash, and tomatoes in that the quantity of the pesticide chemical was in excess of the zero tolerance for endrin on those enumerated foods; 2. any leafy vegetable which had been sprayed with endrin, or any vegetable on which or in connection with which endrin had been used contrary to the uses for endrin registered with the United States Department of Agriculture; and 3. any vegetables produced by the defendant unless and until procedures were established which would insure against the interstate shipment of any violative food, which would include the following measures:

A. it was clearly established that said vegetables did not bear or contain
(i) any traces of an unsafe pesticide chemical for which no tolerance had been established by regulation, or

(ii) any quantity of any unsafe pesticide chemical in excess of the established tolerance for such pesticide chemical on the vegetable;

B. records were maintained which showed the number and times of application of endrin and any other pesticide chemical including the formula and/or amounts and proportions of each of the chemicals used, the products so treated, and the method of application to each product;

C. an individual, qualified by training in the uses and natures of pesticide chemicals, including a knowledge of the uses of such chemicals registered with the United States Department of Agriculture, was employed to advise and supervise the uses made by the defendant of all pesticide chemicals; and

D. representatives of the Food and Drug Administration were given free access to inspect the records relating to the use of pesticide chemicals.

A hearing was held before the court on 1-9-63, the restraining order having expired. The defendant did not appear at the hearing and the court entered a temporary injunction incorporating the terms of the restraining order.

On 2-13-63, the defendant having consented to the entry of such a decree, a decree of permanent injunction was entered enjoining the defendant as set forth above.

29467. Dried white corn. (F.D.C. No. 49457. S. Nos. 32-626 X, 32-633 X.)

QUANTITY: 77 100-lb. bags of white corn at Oxnard, Calif., in possession of La Central Bakery.

SHIPPED: Prior to 10-10-63, from the State of Kansas.

LIBELED: 11-20-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-30-63. Default- destruction.

29468. Dried black-eyed peas and dried red beans. (F.D.C. No. 46294. S. Nos. 95-927/8 R.)

QUANTITY: 192 100-lb. bags of dried black-eyed peas, and 21 100-lb. bags of dried red beans, at Denton, Tex.

SHIPPED: Between 2-27-61 and 7-3-61, from California, and Mountainair, N. Mex.

LIBELED: 8-15-61, E. Dist. Tex.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 10-17-61. Consent—claimed by Whitson Food Processing Co., Denton, Tex., for use as seed and/or animal feed.

29469. Soybeans. (F.D.C. No. 49720. S. No. 53-864 X.)

QUANTITY: 200 100-lb. bags at Portland, Oreg., in possession of Porter-Scarpelli Macaroni Co.

SHIPPED: 12-10-62, from Stuttgart and Little Rock, Ark.

LIBELED: 1-17-64, Dist. Oreg.

CHARGE: 402(a)(3)—contained insects and rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-28-64. Consent—claimed by Porter-Scarpelli Macaroni Co. of Portland, Oreg. Segregated; 60 bags denatured.

29470. Dried pinto beans. (F.D.C. No. 49837. S. No. 96-921 A.)

QUANTITY: 20 100-lb. bags at Sacramento, Calif., in possession of Bert McDowell Grocery Co.

SHIPPED: 1-29-64, from Buhl, Idaho.

LIBELED: 3-17-64, N. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 3-26-64. Consent—destruction.

29471. Dried Great Northern beans. (F.D.C. No. 49555. S. Nos. 47-585/6 X.)

QUANTITY: 25 100-lb. bags of beans at Springfield, Mo., in possession of Finkbiner Transfer & Storage Co.

SHIPPED: 12-26-62, from outside the State of Missouri.

LIBELED: 12-5-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained insect filth and insect-damaged beans; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 1-3-64. Default—destruction.

29472. Cucumbers in brine. (F.D.C. No. 48560. S. No. 79-771 T.)

INFORMATION FILED: 6-11-63, Dist. Minn., against Pa Wray Pickle Co., Inc., Minneapolis, Minn., and John E. McNulty, president.

ALLEGED VIOLATION: Between 8-30-61 and 8-30-62, while a quantity of cucumbers were being held for sale after shipment in interstate commerce, the defendants caused the article to be held in a tank that was accessible to insects, rodents, and birds and to be exposed to contamination by insects, rodents, and birds, which act resulted in the article being adulterated.

CHARGE: 402(a)(3)—contained insects and insect fragments; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-30-64. Corporation—\$150 fine; individual—\$150 fine.

29473. Cucumbers in brine. (F.D.C. No. 49366. S. No. 6-052 X.)

QUANTITY: 1,000 bushels, at Swansea, Mass., in possession of Star Pickling Corp.

SHIPPED: 7-18-63 and 7-24-63, from Landisville, N.J.

LIBELED: 10-1-63, Dist. Mass.

CHARGE: 402(a)(3)—contained *Drosophila* flies and other insects; and 402(a)(4)—prepared and held under insanitary conditions.

DISPOSITION: 10-22-63. Consent—claimed by Star Pickling Corp., and reconditioned.

TOMATOES AND TOMATO PRODUCTS

29474. Canned tomatoes. (F.D.C. No. 49505. S. No. 7-719 X.)

QUANTITY: 238 cases, each containing 24 1-lb. cans, at Watertown, Mass.

SHIPPED: 8-29-63, from Harmony, Md., by A. N. Faulkner & Co.

LABEL IN PART: (Can) "Pine Cone Brand Peeled Tomatoes * * * Albert W. Sisk and Son Distributors—Not Manufacturers Main Office Preston, Md. Sales Office Aberdeen, Md."

LIBELED: 11-7-63, Dist. Mass.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 3-16-64. Default—destruction.

29475. Canned tomatoes. (F.D.C. No. 49975. S. No. 12-982 A.)

QUANTITY: 266 cases, each containing 24 1-lb. 12-oz. cans, at Augusta, Maine.

SHIPPED: 1-22-64, from Cambridge, Md., by Albert W. Sisk & Son.

LABEL IN PART: (Can) "Pride Of The Farm Brand Peeled Tomatoes * * * Albert W. Sisk & Son * * * Preston, Md."

LIBELED: 4-15-64, Dist. Maine.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 4-30-64. Default—destruction.

29476. Canned tomatoes. (F.D.C. No. 49925. S. No. 78-687 A.)

QUANTITY: 628 cases, each containing 6 6-lb. 6-oz. cans, at Yonkers, N.Y.

SHIPPED: 1-17-64, from Snow Hill, Md., by Albert W. Sisk & Son.

LABEL IN PART: (Can) "Dandy Tomatoes * * * Distributors Kane-Miller Corp. Yonkers, N.Y."

LIBELED: 3-23-64, S. Dist. N.Y.,

CHARGE: 402(a)(3)—contained fly eggs and maggots when shipped.

DISPOSITION: 4-20-64. Default—destruction.

29477. Canned tomatoes. (F.D.C. No. 49936. S. No. 85-280 A.)

QUANTITY: 181 cases, each containing 6 6-lb. 6-oz. cans, at Philadelphia, Pa.

SHIPPED: 1-8-64, from Easton, Md., by A. W. Sisk & Son of Preston, Md.

LABEL IN PART: (Can) "Herald Brand Extra Standard Tomatoes * * * Distributors Githens Rexsamer & Company, Inc. Philadelphia, Pa. Baltimore, Md."

LIBELED: 3-24-64, E. Dist. Pa.

CHARGE: 402(a)(3)—contained *Drosophila* fly eggs and maggots when shipped.

DISPOSITION: 4-22-64. Default—destruction.

29478. Canned tomatoes. (F.D.C. No. 49822. S. No. 33-510 A.)

QUANTITY: 150 cases, each containing 24 1-lb. 12-oz. cans, at Nashville, Tenn.

SHIPPED: 1-30-64, from Cullman, Ala., by King Pharr Canning Operations, Inc.

LABEL IN PART: (Can) "Seven Day Brand Tomatoes * * * Distributed by Ragland, Potter & Co., Inc. of Tennessee."

LIBELED: 3-4-64, M. Dist. Tenn.

CHARGE: 402(a)(3)—contained decomposed tomato material when shipped.

DISPOSITION: 3-26-64. Default—destruction.

29479. Tomato catsup. (F.D.C. No. 49724. S. No. 82-315 X.)

QUANTITY: 296 cases, each containing 24 14-oz. btls., at Cincinnati, Ohio.

SHIPPED: 12-4-63, from Elwood, Ind., by Fettig Canning Corp.

LABEL IN PART: (Btl.) "White Villa Tomato Catsup * * * White Villa Grocers, Inc. Distributors Cincinnati, Ohio Dayton, Ohio."

LIBELED: 1-16-64, S. Dist. Ohio.

CHARGE: 402(a) (3)—contained decomposed tomato material when shipped.

DISPOSITION: 3-20-64. Consent—claimed by Fettig Canning Corp., Elwood, Ind. Segregated; 132 btls. destroyed.

29480. Tomato juice. (F.D.C. No. 46166. S. No. 5-523 R.)

QUANTITY: 220 cases, each containing 12 1-qt. 14-oz. cans, at Roanoke, Va.

SHIPPED: 3-3-61, from Westminster, Md., by B. F. Shriver Co.

LABEL IN PART: (Can) "Shriver's A No. One * * * Tomato Juice Packed by The B. F. Shriver Co., Westminster, Md."

LIBELED: 8-7-61, W. Dist. Va.

CHARGE: 402(a) (3)—contained fly eggs and maggots when shipped.

DISPOSITION: 11-1-61. Default—delivered to a public institution for use as animal feed.

29481. Tomato puree. (F.D.C. No. 49798. S. No. 33-001 A.)

QUANTITY: 196 cases, each containing 6 6-lb. 9-oz. cans, at Cincinnati, Ohio.

SHIPPED: 11-15-63, from Austin, Ind., by Morgan Packing Co., Inc.

LABEL IN PART: (Can) "Restaurant Quality Brand Fancy Tomato Puree * * * Packed for Cincinnati Foods, Inc., Cincinnati, Ohio."

LIBELED: 2-7-64, S. Dist. Ohio.

CHARGE: 402(a) (3)—contained decomposed tomato material when shipped.

DISPOSITION: 3-10-64. Default—destruction.

MEAT PRODUCTS AND POULTRY

29482. Canned beef (2 seizure actions). (F.D.C. Nos. 48784; 48986. S. Nos. 57-225 V; 83-978 V, 93-615 V.)

QUANTITY: 36 cases, each containing 6 4-lb. cans, at Cameron, Wis.; and 936 cases, each containing 6 4-lb. cans, at Tomah, Wis.

SHIPPED: (Both lots) 3-12-63 and 4-12-63, from Chicago, Ill., to James E. Williams (Williams Bros. Mink Ranch), Tomah, Wis., and (36-case lot) re-shipped 4-1-63 from Tomah, Wis., to Cameron, Wis., by James E. Williams.

LABEL IN PART: (Can) "Cargill brand beef and natural juices product of Argentine * * * packed for Cargill, Inc. by Frigorifico El Duraznillo S.R.L. Cordoba * * * Argentina" and (some cases) "Mink Food."

RESULTS OF INVESTIGATION: Investigation revealed that the original consignee of the shipment from Argentina rejected the beef for human food because of filth in the beef and thereafter sold the beef to James E. Williams for use as mink food. Investigation also indicated that the beef was being represented at Tomah, Wis., as fit for human food.

LIBELED: 5-24-63, 5-27-63, W. Dist. Wis.

CHARGE: 402(a) (3)—contained houseflies, housefly fragments, other insects and insect fragments, and one lot also contained cow hairs, when shipped and while held for sale.

DISPOSITION: 7-8-63. Default—delivered to a public institution for use as animal feed.

29483. Canned ham. (F.D.C. No. 49497. S. Nos. 3-164/6 X.)

QUANTITY: 19 cases, each containing 6 11-lb. cans, 28 cases, each containing 6 12-lb. cans, and 19 cases each containing 6 13-lb. cans, at Raleigh, N.C.

SHIPPED: 7-25-63, from New York, N.Y.

LIBELED: 11-6-63, E. Dist. N.C.

CHARGE: 402(a)(3)—contained decomposed ham while held for sale.

DISPOSITION: 1-15-64. Default—destruction.

29484. Frozen chicken. (F.D.C. No. 49574. S. No. 58-481 X.)

QUANTITY: 48 cases, each containing 6 5-lb. ctns., at Los Angeles, Calif.

SHIPPED: 10-28-63., from Collins, Miss.

LIBELED: 12-26-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained mold while held for sale.

DISPOSITION: 1-15-64. Default—destruction.

29485. Canned turkey. (F.D.C. No. 48678. S. No. 30-948 V.)

QUANTITY: 127 cases, each containing 24 1½-lb. cans, at El Monte, Calif.

SHIPPED: Between 9-6-62 and 11-23-62, from Chicago, Ill.

LIBELED: 1-17-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained decomposed turkey meat while held for sale.

DISPOSITION: 2-25-64. Default—destruction.

NUTS AND NUT PRODUCTS

29486. Unshelled pecans. (F.D.C. No. 49703. S. No. 4-619 X.)

QUANTITY: 631 lbs. at Richmond, Va.

SHIPPED: Prior to 12-9-63, from Albany, Ga., by an unknown shipper.

LABEL IN PART: (Tag) "Tesche."

LIBELED: 1-7-64, E. Dist. Va.

CHARGE: 402(a)(3)—contained decomposed nuts, shriveled nuts, and empty shells when shipped.

DISPOSITION: 2-7-64. Default—delivered to a public institution for use as animal feed.

29487. Pecan chips. (F.D.C. No. 49591. S. No. 23-851 X.)

QUANTITY: 46 cases, each containing 36 1¾-oz. pkgs., at Denver, Colo.

SHIPPED: 11-11-63, from San Antonio, Tex., by Guadalupe Valley Pecan Co.

LABEL IN PART: (Pkg.) "Ann Nutley's Pecan Chips Ready to use * * * Chopped Pecans Guadalupe Valley Pecan Co., San Antonio, Texas."

LIBELED: 1-9-64, Dist. Colo.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 2-27-64. Default—delivered to a public institution for use as animal feed.

29488. Shelled black walnuts. (F.D.C. No. 47408. S. No. 28-999 T.)

QUANTITY: 15 30-lb. ctns. at Wichita, Kan.

SHIPPED: 1-24-62, from Verona, Mo., by Spring River Shelling Co.

LABEL IN PART: (Ctn.) "Ozark Brand Black Walnuts Packed and Pasteurized by Spring River Shelling Co., Verona, Mo. Mixed Sizes."

LIBELED: On or about 4-6-62, Dist. Kans.

CHARGE: 402(a)(3)—contained rodent hairs and *E. coli* when shipped.

DISPOSITION: 6-12-62. Default—destruction.

29489. Unshelled mixed nuts. (F.D.C. No. 49452. S. No. 23-652 X.)

QUANTITY: 94 cases, each containing 12 2-lb. bags, at Denver, Colo.

SHIPPED: 10-30-63, from Dallas, Tex., by Hines Nut Co.

LABEL IN PART: (Bag) "Triple HHH Brand Selected Mixed Nuts * * * Packed by Hines Nut Company, * * * Dallas, Texas."

LIBELED: 12-2-63, Dist. Colo.

CHARGE: 402(a)(3)—contained insects, moldy, rancid nuts, shriveled nuts, and empty shells when shipped.

DISPOSITION: 12-17-63. Default—delivered to charitable institutions.

OILS AND FATS

29490. Corn oil. (F.D.C. No. 45643. S. No. 48-985 R.)

QUANTITY: 175 cases of 12 1-qt. btls., consisting of 151 cases, and 24 cases.

SHIPPED: 3-7-61, from Denison, Tex., by Conway Oil Co.

LABEL IN PART: (Btl.) "Nu Made Pure Corn Oil * * * Safeway Stores, Incorporated * * * Oakland, Calif. * * * Denison, Texas."

RESULTS OF INVESTIGATION: Examination showed the article to be a mixture of corn oil and cottonseed oil.

LIBELED: 4-28-61, Dist. Colo.

CHARGE: 402(b)(1)—when shipped, cottonseed oil had been substituted in part for corn oil; and 403(a)—the label statement "Pure Corn Oil" was false and misleading as applied to an article consisting of a mixture of corn oil and cottonseed oil.

DISPOSITION: 8-21-61. Consent—claimed by Safeway Stores, Inc., of Oakland, Calif., and ordered released under bond for manufacturing use.

29491. Cottonseed oil and peanut oil. (F.D.C. No. 47872 S. Nos. 1-294 T, 2-341 T.)

INFORMATION FILED: 8-24-62, M. Dist. Ga., against Camilla Cotton Oil Co., Camilla, Ga.

SHIPPED: (Cottonseed oil) 11-22-61, from Camilla, Ga., to Charlotte, N.C., and (peanut oil) 3-17-62, from Camilla, Ga., to Boonton, N.J.

CHARGE: 402(a)(4)—prepared under insanitary conditions.

PLEA: Not guilty.

DISPOSITION: On 11-19-62, the case came on for trial before court and jury.

On 11-20-62, the jury returned a verdict of guilty to the count involving the shipment of cottonseed oil and a verdict of not guilty to the count involving peanut oil. On 11-26-62, the firm was fined \$1,000.

SPICES, FLAVORS, AND SEASONING MATERIALS*

29492. Stick cinnamon. (F.D.C. No. 47282. S. No. 59-301 T.)

QUANTITY: 17 bbls., each containing 115 lbs., 1 bbl. containing 86 lbs., and 23 doz. 1¾-oz. pkgs., at Des Moines, Iowa.

SHIPPED: 4-7-61, from New York, N.Y.

LIBELED: 4-3-62, S. Dist. Iowa.

CHARGE: 402(a)(3)—contained insects, insect excreta, insect parts, insect webbing, insect eggs, and moldy sticks of cinnamon while held for sale.

DISPOSITION: 6-19-62. Consent—claimed by Tone Bros., Des Moines, Iowa. Segregated; 63 lbs. destroyed.

29493. Ground coriander and whole coriander seed. (F.D.C. No. 48112. S. Nos. 74-493/5 T, 74-546 T.)

QUANTITY: 107 110-lb. bags, and 44 bags containing a total of approximately 4,313 lbs. of whole coriander seed, and 25 200-lb. drums of ground coriander seed, at Brooklyn, N.Y., in possession of Purity Spice & Seed Mills.

SHIPPED: 11-6-61, from Morocco.

LABEL IN PART: (Drum) "Flavor No. 100 American Tub. Co. Maury St., Richmond Va."

RESULTS OF INVESTIGATION: All of the articles had been imported in bulk as whole coriander seed, and part had been ground by the dealer and packed in drums.

LIBELED: 10-2-62, E. Dist. N.Y.

CHARGE: 402(a)(3)—while held for sale, the whole coriander seed of the 107-bag lot contained insects, insect fragments, and rodent excreta; the whole coriander seed of the 44-bag lot contained insects; and the ground coriander contained insect fragments and rodent hair fragments.

DISPOSITION: 10-23-62. Default—destruction.

29494. Mustard seed and green coffee beans. (F.D.C. No. 48490. S. Nos. 15-214/15 V.)

QUANTITY: 192 100-lb. bags of mustard seed, and 51 100-lb. bags of green coffee beans, at Nashville, Tenn., in possession of American Tea & Coffee Co.

SHIPPED: (Mustard seed) 10-12-62, from Power, Mont., and (coffee beans) 8-20-62, from New Orleans, La.

LIBELED: 12-14-62, M. Dist. Tenn.

CHARGE: 402(a)(3)—the mustard seed contained rodent urine; and 402(a)(4)—both articles held under insanitary conditions.

DISPOSITION: 4-2-63. Consent—claimed by American Tea & Coffee Co. Segregated; 2,500 lbs. of coffee beans and 11,000 lbs. of mustard seed destroyed.

29495. Mustard seed. (F.D.C. No. 49413. S. Nos. 17-063/3 X.)

QUANTITY: 177 unlabeled 100-lb. bags at Nashville, Tenn.

SHIPPED: 7-20-63, from Power, Mont.

LIBELED: 10-11-63, M. Dist. Tenn.

CHARGE: 402(a)(3)—contained rodent urine while held for sale.

*See also No. 29410.

DISPOSITION: 3-16-64. Consent—claimed by Fletcher-Wilson Foods, Inc., of Nashville, Tenn. Segregated; 40 bags destroyed.

29496. Mustard seed. (F.D.C. No. 49614, S. No. 60-153 A.)

QUANTITY: 158 100-lb. bags, at Los Angeles, Calif., in possession of Walker Products Co.

SHIPPED: 10-9-63 and 12-26-63, from Conrad, Mont.; and Humboldt, Saskatchewan, Canada.

LIBELED: 2-5-64, S. Dist. Calif.

CHARGE: 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-28-64. Consent—claimed by Robert L. Walker, t/a Walker Products Co., Los Angeles, Calif., and reconditioned.

29497. Wine vinegar. (F.D.C. No. 48855. S. No. 71-123 V.)

QUANTITY: 754 cases, each containing 12 btls., at Detroit, Mich.

SHIPPED: 3-15-63, from Chicago, Ill., by Pacific Wine Co.

LABEL IN PART: (Btl.) "Regina Queen of Flavor Wine Vinegar All Purpose * * * 13.3237 Imp. Oz. Produced by Regina Grape Products Co. Etiwanda, Calif.," and (molded in the glass of the bottle) "12.8 Fl. Oz." and "4/5 U.S. Pint."

RESULTS OF INVESTIGATION: The quantity of contents was found to be 12.8 fl. oz. The quantity of contents statements molded in the dark green glass of the bottle were inconspicuous against the dark background of the product.

LIBELED: 5-1-63, E. Dist. Mich.

CHARGE: 403(a)—when shipped, the label statement "13.3237 Imp. Oz." was misleading since it was not in terms of measure generally used by consumers to express the quantity of such food and implied or suggested that the quantity of contents was greater than it was; 403(f)—the information required to appear on the label under 403(e)(2), namely, an accurate statement of the quantity of the contents in terms of measure, was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the average individual under customary conditions of purchase and use.

DISPOSITION: 2-10-64. Consent—claimed by Regina Grape Products Co., Etiwanda, Calif., without admitting or denying the allegations of misbranding in the libel, and ordered delivered to a Government institution.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE*

29498. Dietary supplement tablets. (F.D.C. No. 49598. S. No. 96-062 X.)

QUANTITY: 119 100-tablet btls., at San Antonio, Tex.

SHIPPED: 4-30-63, from Philadelphia, Pa.

RESULTS OF INVESTIGATION: Each tablet was labeled to contain 0.2 mgm. folic acid as a dietary supplement and the directions for use were 1 or 2 tablets after meals or as directed by physician.

LIBELED: 1-10-64, W. Dist. Tex.

*See also No. 29403.

CHARGE: 402(a)(2)(C)—while held for sale, the article contained a food additive, namely, folic acid, which was unsafe within the meaning of 409, since it and its use and intended use were not in conformity with a regulation or exemption in effect pursuant to 409.

DISPOSITION: 5-4-64. Default—destruction.

29499. Dietary supplement tablets. (F.D.C. No. 49846. S. No. 34-835 A.)

QUANTITY: 23 192-tablet boxes, each containing 16 12-tablet rolls, at Dayton, Ohio.

SHIPPED: 6-14-63 and 7-24-63, from Chicago, Ill.

LIBELED: 3-20-64, S. Dist. Ohio.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 4-16-64. Default—destruction.

29500. Various canned infant formula foods. (F.D.C. No. 49559. S. No. 34-659 X.)

QUANTITY: 15 bushel baskets containing 1-lb. cans, at Minneapolis, Minn., in possession of C. G. Urness, t/a World Salvage.

SHIPPED: Prior to 12-4-63, by unknown shippers, from outside the State of Minnesota.

RESULTS OF INVESTIGATION: Investigation showed that various foods, drugs, and cosmetics were subject to fire damage on or about 12-6-61, and that they had been held in basement storage at a retail drug store in Minneapolis, prior to receipt by the dealer. The containers were either unlabeled or bore labels damaged by fire, smoke, or water, and the cans were rusted and contaminated with dirt and debris.

The drugs and cosmetics were also libeled, as is reported in notices of judgment on cosmetics, No. 252, and in notices of judgment on drugs and devices, No. 7750. The articles were held for sale by the dealer.

LIBELED: 12-9-63, Dist. Minn.

CHARGE: 403(e)(1)—while held for sale, the articles failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor; 403(e)(2)—the articles failed to bear a label containing an accurate statement of the quantity of the contents; 403(f)—the information required under 403(e)(1), 403(e)(2), 403(i)(1), and 403(i)(2) was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use; 403(i)(1)—the labels of various of the articles failed to bear the common or usual name of the food; and 403(i)(2)—the labels of the articles failed to bear the common or usual name of each ingredient.

DISPOSITION: 12-24-63. Consent—destruction.

INDEX TO NOTICES OF JUDGMENT F.N.J. NOS. 29401 TO 29500

PRODUCTS

	N.J. No.		N.J. No.
Alfalfa hay_____	29454	Eggs, frozen_____	29446-29452
Anchovies _____	29459	Fats. <i>See</i> Oils and fats.	
Angelfood cake_____	29401	Feed, medicated_____	29456-29458
Bakery products_____	29401-29404	Feeds and grains_____	29453-29458
Barley _____	29417, 29418	Fish and shellfish_____	29459-29462
Beans, black-eyed, dried. <i>See</i>		Flavors. <i>See</i> Spices, flavors, and	
Peas, black-eyed, dried.		seasoning materials.	
Great Northern, dried_____	29471	Flour _____	29407-29416, 29443
pinto, dried_____	29470	gluten _____	29413
red, dried_____	29468	pastry _____	29414, 29415
Beef, canned_____	29482	soy _____	29416
Bicon medicated feed_____	29457	Food additive violations_____	29456-
Bread and rolls_____	29401, 29402		29458, 29498
Butter _____	29440, 29441	Fruitcake, with sauce_____	29404
Cake, angelfood_____	29401	Fruits and vegetables_____	29463-29481
mix _____	29409	fruit, canned_____	29463, 29464
pound _____	29401	frozen _____	29465
Candy. <i>See</i> Confectionery.		tomatoes and tomato pro-	
Cat food, canned_____	¹ 29453	ducts _____	29474-29481
Cereal(s) and cereal products__	29401-	vegetables and vegetable pro-	
	29436	ducts _____	29466-29473
flakes with raisins_____	29419	Ginger, preserved_____	29438
Cheese _____	² 29442, 29443	Gluten flour_____	29413
Chicken, frozen_____	29484	Grains. <i>See</i> Feeds and grains.	
Cinnamon, stick_____	29492	Great Northern beans, dried____	29471
Coffee beans, green_____	29494	Greens, dandelion_____	³ 29466
Collards _____	³ 29466	mustard _____	³ 29466
Confectionery _____	29437, 29438	turnip _____	³ 29466
Coriander seed, ground_____	29493	Halibut, frozen_____	29460
whole _____	29493	Ham, canned_____	29483
Cornmeal _____	29405, 29406	Hay, alfalfa_____	29454
Corn oil_____	29490	Infant formula foods, canned____	29500
white, dried_____	29467	Kale _____	³ 29466
Cottonseed oil_____	⁴ 29491	Macaroni _____	29421
Crackers, Diet-Snax_____	29403	Meat products and poultry_____	29482-
Cucumbers, in brine_____	29472, 29473		29485
Dairy products_____	29440-29445	Medicated feed_____	29456-29458
Dandelion greens_____	³ 29466	Milk, nonfat, dry_____	29444
Dietary supplement tablets_____	29498,	solids, nonfat, dry_____	29445
	29499	Mix, cake_____	29409
Diet-Snax crackers_____	29403	pancake _____	29409
Dog food, canned_____	¹ 29453	piecrust _____	29409
		Mustard greens_____	³ 29466
		seed _____	29494-29496

¹ (29453) Prosecution contested. Contains opinion of the court, motion for judgment of acquittal, and order of the court.

² (29442) Contempt of injunction.

³ (29466) Injunction issued.

⁴ (29491) Prosecution contested.

	N.J. No.		N.J. No.
Nonfat dry milk-----	29444	Shrimp, frozen-----	29461
solids-----	29445	breaded, frozen-----	29462
Nuts and nut products---	29486-29489	Soybeans-----	29469
Oats, quick-cooking-----	29421	Soy flour-----	29416
rolled-----	29421	Spices, flavors, and seasoning	
rolled, quick-cooking-----	29421	materials-----	29410, 29492-29497
Oil, corn-----	29490	Squid, frozen-----	29460
cottonseed----- ⁴	29491	Strawberries, frozen-----	29465
peanut----- ⁴	29491	sliced, frozen-----	29465
Oils and fats-----	29490, 29491	Sugar-----	29439
Pancake mixes-----	29409	Swiss chard----- ³	29466
Pastry flour-----	29414, 29415	Tomato(es), canned-----	29474-29478
Peaches, canned-----	29463, 29464	catsup-----	29479
Peanut oil----- ⁴	29491	juice-----	29480
Peas, black-eyed, dried-----	29468	puree-----	29481
Pecan(s), unshelled-----	29486	Turkey, canned-----	29485
chips-----	29487	Turnip greens----- ³	29466
Pesticide chemical violations---	29417, 29454, 29466	Vegetables. <i>See</i> Fruits and vegetables.	
Piecrust mix-----	29409	Vinegar, wine-----	29497
Pinto beans, dried-----	29470	Vitamin, mineral, and other products of special dietary significance-----	29403, 29498-29500
Poultry. <i>See</i> Meat products and poultry.		Vitamin-mineral supplement	
Pound cake-----	29401	feed-----	29455
Rape (green vegetable)----- ³	29466	Walnuts, black, shelled-----	29488
Rice-----	29409, 29410, 29413, 29420	Wheat-----	29422-29436
Rolls. <i>See</i> Bread and rolls.		Wine vinegar-----	29497
Salmon, frozen-----	29460		
Sesame seed-----	29410		

SHIPPERS, MANUFACTURERS, AND DISTRIBUTORS

	N.J. No.		N.J. No.
American Tea & Coffee Co.:		Buffington & Ward, Inc.:	
mustard seed and green coffee		frozen eggs-----	29446
beans-----	29494	Burkhardt Co-op. Association:	
American Tub Co.:		medicated feed-----	29456
ground coriander seed and		Camilla Cotton Oil Co.:	
whole coriander seed-----	29493	cottonseed oil and peanut oil-- ⁴	29491
Austinville Creamery:		Cargill, Inc.:	
butter-----	29440	canned beef-----	29482
Bad Axe Grain Co.:		Carver Foods Co.:	
wheat-----	29430	fruitcake with sauce-----	29404
Baraban, Jack:		Chowan Milling Co., Inc.:	
flour, sesame seed, and rice---	29410	cornmeal-----	29406
Bennett, C. C.:		Cincinnati Foods, Inc.:	
candy-----	29437	tomato puree-----	29481
Benson's, Inc.:		Cohen, Max:	
French hard rolls, angelfood		bread and rolls-----	29402
cake, and pound cake-----	29401		

³ (29466) Injunction issued.⁴ (29491) Prosecution contested.

	N.J. No.		N.J. No.
Conway Oil Co.:		Goldhilll Food Corp.:	
corn oil -----	29490	frozen shrimp -----	29461
Cooper, G. N.:		Guadalupe Valley Pecan Co.:	
alfalfa hay -----	29454	pecan chips -----	29487
Cosner, Melvin:		Happyvale Flour Mills:	
flour, sesame seed, and rice ---	29410	flour -----	29407
D & D Foods, Inc.:		Health Food Distributors, Inc.:	
canned peaches -----	29464	sugar -----	29439
Dakota Cheese Co.:		Hettinger Cooperative Equity	
cheddar cheese ----- ²	29442	Elevator Co.:	
Dartmouth Marketing Co., Inc.:		wheat -----	29426
frozen breaded shrimp -----	29462	Hettinger Cooperative Equity	
Delight Certified Egg Farms:		Exchange:	
frozen eggs -----	29448	wheat -----	29428
Delight Egg Farms, Inc.:		Higdon, J. B., Sr.:	
frozen eggs -----	29448	flour -----	29412
Desert Brand Foods, Inc.:		Hines Nut Co.:	
frozen eggs -----	29451	unshelled mixed nuts -----	29489
Fabro of Georgia, Inc.:		Ideal Food Stores:	
canned dog food and canned		cheddar cheese and flour ----	29443
cat food ----- ¹	29453	James, S. H.:	
Fabro, Inc.:		cornmeal -----	29405
canned dog food and canned		Kane-Miller Corp.:	
cat food ----- ¹	29453	canned tomatoes -----	29476
Farmers Cooperative Co.:		Kilmer Creamery:	
barley -----	29417	butter -----	29441
Farmers Equity Elevator Co.:		King Pharr Canning Operations,	
wheat -----	29436	Inc.:	
Farmers Union Elevator:		canned tomatoes -----	29478
wheat -----	29427	La Central Bakery:	
Faulkner, A. N., & Co.:		dried white corn -----	29467
canned tomatoes -----	29474	Lady Baltimore Wholesale Gro-	
Fettig Canning Corp.:		cery Co.:	
tomato catsup -----	29479	flour, sesame seed, and rice ---	29410
Finkbiner Transfer & Storage		Lansing Grain Co.:	
Co.:		wheat -----	29429
dried Great Northern beans ---	29471	Larson, Merle A., Inc.:	
Fitzgerald, Wm., Milk Products		wheat -----	29423
Corp.:		Lu Mar Laboratories:	
nonfat dry milk solids -----	29445	Bicon medicated feed -----	29457
Frigorifico El Duraznillo:		McDowell, Bert, Grocery Co.:	
canned beef -----	29482	dried pinto beans -----	29470
Gallatin Valley Milling Co.:		McNulty, J. E.:	
wheat -----	29422	cucumbers in brine -----	29472
Githens Rexsamer & Co., Inc.:		Malone Transport, Inc.:	
canned tomatoes -----	29477	frozen shrimp -----	29461
Gold Crest Canning Co.:		Manvel Farmers Union Elevator	
canned peaches -----	29463	Co.:	
		wheat -----	29431

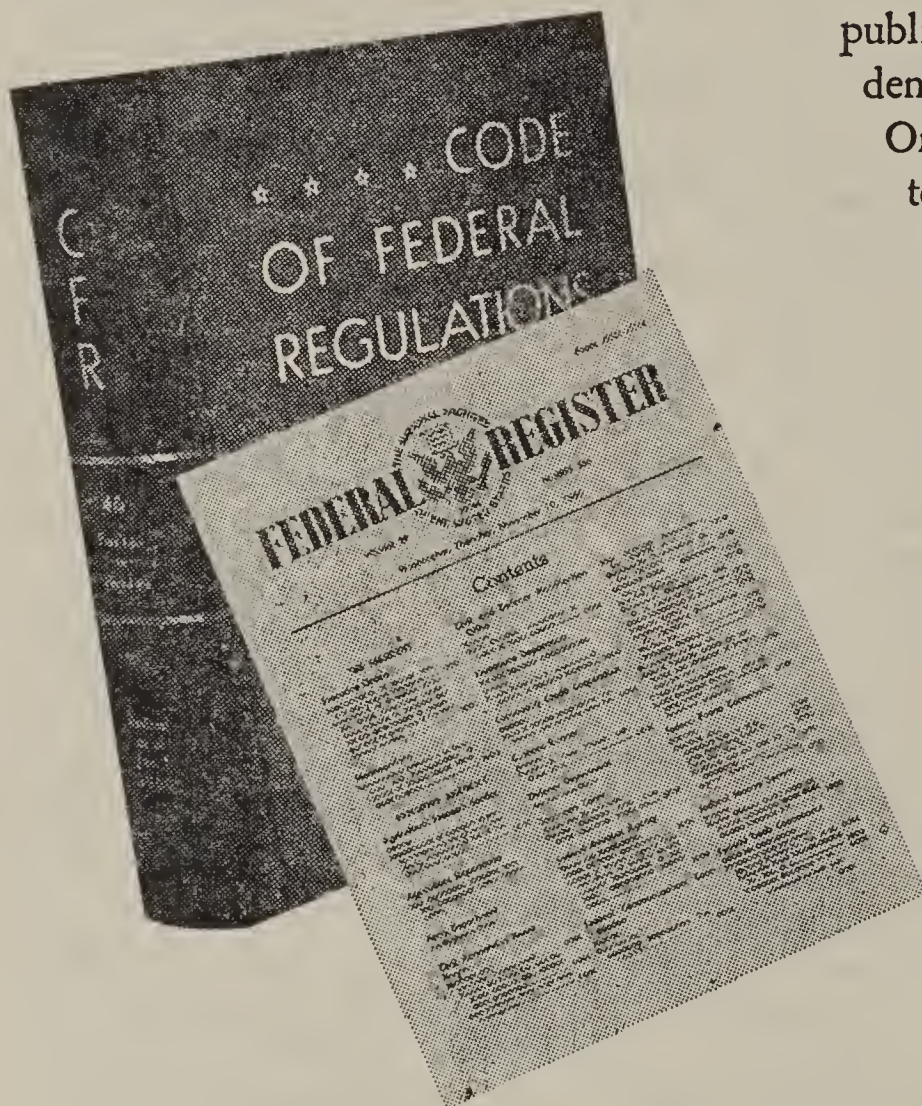
¹ (29453) Prosecution contested. Contains opinion of the court, motion for judgment of acquittal, and order of the court.

² (29442) Contempt of injunction.

	N.J. No.		N.J. No.
Midland Cooperatives, Inc.:		Shriver, B. F., Co.:	
medicated feed-----	29456	tomato juice-----	29480
Midland Feed Co.:		Sisk, Albert W., & Son:	
wheat -----	29435	canned tomatoes-----	29474-29477
Morgan Packing Co., Inc.:		Smelkinson Bros. Corp.:	
tomato puree-----	29481	frozen eggs-----	29446
Nicholson, Don, Elevator:		Sniderman Bros., Inc.:	
wheat -----	29424	cereal flakes with raisins-----	29419
Norris Grain Co.:		Sniderman, Harvey:	
wheat -----	29433	cereal flakes with raisins-----	29419
Novelty Peanut Co.:		Southern Farms:	
candy -----	29437	frozen eggs-----	29450, 29452
Nutley, Ann:		Spiers, D. B., Sr.:	
pecan chips-----	29487	cornmeal -----	29406
Oesterling, P. J., & Son, Inc.:		Spring River Shelling Co.:	
medicated feed-----	29458	shelled black walnuts-----	29488
Oldach, Wm. H., Inc.:		Star Pickling Corp.:	
frozen eggs-----	29452	cucumbers in brine-----	29473
Pacific Wine Co.:		Streit, Aron, Inc.:	
wine vinegar-----	29497	Diet-Snax crackers-----	29403
Pa Wray Pickle Co., Inc.:		Travis, S. Paul, Co.:	
cucumbers in brine-----	29472	pastry flour-----	29414, 29415
Porter-Scarpelli Macaroni Co.:		Urnss, C. G.:	
soybeans -----	29469	canned infant formula foods--	29500
Portland Farmers Elevator Co.:		Valley Frozen Foods, Inc.:	
wheat -----	29432	frozen breaded shrimp-----	29462
Purity Spice & Seed Mills:		Victory Baking Co.:	
ground coriander seed and		bread and rolls-----	29402
whole coriander seed-----	29493	Walker Products Co.:	
Ragland, Potter & Co., Inc:		mustard seed-----	29496
canned tomatoes-----	29478	Wheeler Equity Exchange:	
Regina Grape Products Co.:		wheat -----	29434
wine vinegar-----	29497	White Villa Grocers, Inc.:	
Richardson, R. R.:		tomato catsup-----	29479
cheddar cheese----- ²	29442	Wilkins, W. M.:	
Russell, J. O.:		candy -----	29437
frozen eggs-----	29450	Williams Bros. Mink Ranch:	
Safeway Stores, Inc.:		canned beef-----	29482
corn oil-----	29490	Williams, J. E.:	
Scranton Equity Exchange:		canned beef-----	29482
wheat -----	29425	Winn-Dixie Stores, Inc.:	
Sermarini, Savino:		French hard rolls, angelfood	
green leafy vegetables----- ³	29466	cake, and pound cake-----	29401
		World Salvage. <i>See</i> Urness, C. G.	
		Zenith Godley Co.:	
		butter -----	29440

² (29442) Contempt of injunction.³ (29466) Injunction issued.

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U.S. Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

NOTICES OF JUDGMENT UNDER THE FEDERAL FOOD,
DRUG, AND COSMETIC ACT

[Given pursuant to section 705 of the Food, Drug, and Cosmetic Act]

29501-29600

FOODS

The cases reported herewith were instituted in the United States district courts by United States attorneys, acting upon reports submitted by the Department of Health, Education, and Welfare. They involve foods which were alleged to be adulterated or misbranded within the meaning of the Act, when introduced into and while in interstate commerce, or while held for sale after shipment in interstate commerce. These cases involve (1) seizure proceedings in which decrees of condemnation were entered after default or consent; (2) criminal proceedings in which pleas of guilty and nolo contendere were entered, or judgments of guilty rendered, and which involved, a directed verdict of acquittal and a judgment of not guilty, in one case each, against one of a number of defendants. The seizure proceedings are civil actions taken against the *goods* alleged to be in violation, and the criminal proceedings are against the *firms* or *individuals* charged to be responsible for violations.

Published by direction of the Secretary of Health, Education, and Welfare.

GEO. P. LARRICK, *Commissioner of Food and Drugs.*

WASHINGTON, D.C., November 24, 1964.

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SECTIONS OF FEDERAL FOOD, DRUG, AND COSMETIC ACT INVOLVED IN ALLEGED VIOLATIONS REPORTED IN F.N.J. NOS. 29501-29600

Adulteration, Section 402(a) (2) (B), the article was a raw agricultural commodity and contained a pesticide chemical which was unsafe within the meaning of Section 408(a) ; Section 402(a) (2) (C), the article contained a food additive which was unsafe within the meaning of Section 409; Section 402(a) (3), the article consisted in whole or in part of a filthy, putrid, or decomposed substance, or it was otherwise unfit for food; Section 402(a) (4), the article had been prepared, packed, or held under insanitary conditions whereby it might have become contaminated with filth or might have been rendered injurious to health; Section 402(b) (1), a valuable constituent had been in whole or in part omitted or abstracted from the article; Section 402(b) (2), a substance had been substituted in whole or in part for the article; Section 402(b) (4), a substance had been added to the article or mixed or packed therewith so as to make it appear better or of greater value than it was; Section 408(a), a poisonous or deleterious pesticide chemical, or a pesticide chemical not generally recognized, among qualified experts, as safe for use, added to a raw agricultural commodity, was deemed to be unsafe because the quantity of the pesticide chemical in or on the raw agricultural commodity was not within the limits of a tolerance prescribed by the Secretary of Health, Education, and Welfare; and Section 409, a food additive was deemed to be unsafe because the food additive and its use or intended use failed to conform to the terms of an effective exemption or because there was not in effect, or the food additive and its use or intended use failed to be in conformity with, a regulation prescribing conditions for safe use.

Misbranding, Section 403(a), the labeling of the article was false and misleading; Section 403(e), the article was in package form, and it failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Section 403(f), a word, statement, or other information required by or under authority of the Act to appear on the label or labeling was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; Section 403(g) (1), the article purported to be or was represented as a food for which a definition and standard of identity had been prescribed by regulations and it failed to conform to such definition and standard; Section 403(h), the article purported to be or was represented as (1) a food for which a standard of quality had been prescribed by regulations, and its quality fell below such standard or (2) a food for which a standard of fill of container had been prescribed by regulations and it fell below the applicable standard of fill of container; Section 403(i), the article was not subject to the provisions of Section 403(g) and (1) its label failed to bear the common or usual name of the article; and (2) the article was fabricated from two or more ingredients, and its label failed to bear the common or usual name of each such ingredient; Section 403(j), the article purported to be and was represented for special dietary uses, and its label failed to bear such information concerning its vitamin, mineral, and other dietary properties as the Secretary had determined to be, and by regulation prescribed as, necessary in order fully to inform purchasers as to its value for such uses; and Section 403(k), the article contained an artificial flavoring, and failed to bear labeling stating that fact.

BEVERAGES AND BEVERAGE MATERIALS

29501. Green coffee beans. (F.D.C. No. 49101. S. No. 41-016 X.)

QUANTITY: 407 140-lb. bags at Brooklyn, N.Y.

SHIPPED: 1-30-63, from Angola, by Volkart Bros., Inc.

LABEL IN PART: (Bag) "Product of Angola Angola Robusta Cafe."

LIBELED: 7-26-63, E. Dist. N.Y.

CHARGE: 402(a)(3)—contained insect-damaged coffee beans when shipped.

DISPOSITION: 5-8-64. Consent—claimed by Volkart Bros., Inc., for export to the original foreign supplier.

29502. Green coffee beans. (F.D.C. No. 49603. S. No. 32-089 X.)

QUANTITY: 164 135-lb. bags, at San Pedro, Calif., in possession of Consolidated Marine, Inc.

SHIPPED: 9-18-63, from Indonesia.

LIBELED: 1-24-64, S. Dist. Calif.

CHARGE: 402(a)(4)—held under insanitary conditions while held for sale.

DISPOSITION: 3-5-64. Consent—claimed by American President Lines, Ltd., San Francisco, Calif. Segregated; 42 bags destroyed.

29503. Jasmine tea. (F.D.C. No. 49848. S. No. 62-448 A.)

QUANTITY: 9 ctns., each containing 150 boxes, at Los Angeles, Calif.

SHIPPED: On an unknown date, from Hong Kong, China, by Tack Kee Tea Co.

LABEL IN PART. (Box) "Tack Kee Tea Co. Head Office: * * * Hong Kong Jasmine Tea Net 5½ Oz."

RESULTS OF INVESTIGATION: Examination showed the article to be approximately 7.32 percent short weight.

LIBELED: 3-20-64, S. Dist. Calif.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of quantity of contents.

DISPOSITION: 6-16-64. Consent—claimed by Tony Q. Lew, t/a International Grocery Co., Los Angeles, Calif., for relabeling.

29504. Sherry wine and wine. (F.D.C. No. 49157. S. Nos. 17-589 V, 17-592 V.)

INFORMATION FILED: 12-9-63, E. Dist. Ky., against Gibson Wine Co., a corporation, Covington, Ky., and Louis W. Schulze, president.

ALLEGED VIOLATIONS: Between 12-31-62 and 1-10-63, the defendants caused bulk quantities of wine and sherry wine, while held for sale after shipment in interstate commerce, to be held in a building that was accessible to insects and to be exposed to contamination by insects, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—the sherry wine contained insects; and 402(a)(4)—both lots held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-9-64. Each defendant—\$500 fine, plus costs.

CEREALS AND CEREAL PRODUCTS

BAKERY PRODUCTS

29505. Enriched bread. (F.D.C. No. 45585. S. Nos. 27-757 R, 27-856 R, 29-278/9 R, 52-437 R.)

INFORMATION FILED: 9-8-61, Dist. Minn., against Red Owl Stores, Inc., Hopkins, Minn., and Vernon J. Winter, vice president, and Arthur J. Kehn, superintendent.

SHIPPED: Between 9-15-60 and 11-2-60, from Minnesota to Wisconsin and Iowa.

LABELS IN PART: (Wrappers) "Split-Top Enriched Bread Made with Butter Baked by Red Owl Stores, Inc., Minneapolis, Minn., Fargo, N.D.," and "Old Style Oven White Enriched Bread Calcium Propionate Added to Retard Spoilage Baked by Red Owl Stores, Inc., Minneapolis, Minn., Fargo, N. D."

CHARGE: 403(g) (1)—when shipped, the Split-Top bread (counts 1, 2, 3, and 4) and the Old Style Oven bread (count 5) purported to be and were represented as enriched bread, a food for which a definition and standard of identity has been prescribed by regulations and the articles failed to conform to such standard in that they contained per pound less than 1.1 mg. of thiamine, less than 0.7 mg. of riboflavin, less than 10.0 mg. of niacin, (all counts) and less than 8.0 mg. of iron (counts 1, 3, 4, and 5); and 403(j)—the Split-Top bread (counts 1, 2, 3, and 4) purported to be and was represented as a food for special dietary use and its label failed to bear as required by regulations, a statement of the proportion of the minimum daily requirements for the vitamins thiamine, riboflavin, and niacin, and the mineral iron, supplied by such food when consumed in a specified quantity during a period of 1 day.

PLEA: Not guilty by each defendant.

DISPOSITION: The individual defendants failed to respond to the summons issued to each of them and, on 2-28-62, each was arrested on a bench warrant. The defendants moved to quash the warrant on the grounds (1) that the information had not been supported by oath, (2) that the affidavit of the Director of the Minneapolis District of the Food and Drug Administration attached to the application for warrant was not an "oath" as required by law, that it failed to show probable cause and was based on hearsay. (3) that the warrant was issued in violation of the fourth and fifth Amendments to the Constitution and (4) that the court did not have jurisdiction over the defendants. The motion was denied 3-14-62.

The defendants moved also to dismiss the information, and in the alternative, to strike as surplusage descriptive phrases identifying the position in the corporation of each of the individual defendants, and for a bill of particulars. The motion for a bill of particulars was granted in part and the other motions were denied.

Pleas of not guilty having been entered, the case came to trial before the court and jury on 5-15-62, and continued until 5-25-62. At the close of the Government's case the court granted the defendants' motion to strike from counts 1-4, the allegation that the articles were misbranded under 403(j). At the close of the trial, the court directed a verdict of acquittal with respect to Vernon J. Winter on the grounds that the Government had not shown a sufficient direct connection on the part of the vice president with the alleged interstate shipments of misbranded bread. The jury returned a verdict of guilty on all counts against the corporation and Arthur J. Kehn. On 6-7-62, the

court imposed a fine of \$2,500, plus costs, against the corporation and a fine of \$1,000 against the individual.

29506. Enriched bread. (F.D.C. No. 49693. S. Nos. 45-689/90 X, 45-694 X, 45-696 X, 45-584 X, 45-919 X.)

INFORMATION FILED: 4-3-64, S. Dist. Ill., against L. Bruno & Sons Bakery, a partnership, and Lorenzo J. Bruno, partner, Collinsville, Ill.

SHIPPED: Between 7-20-63 and 9-6-63, from Collinsville, Ill., to St. Louis, Mo.

LABEL IN PART: "BIG EXTRA VALUE ENRICHED WHITE BREAD L. Bruno & Son, Collinsville, Ill. WGT. 1 LB."

CHARGE: 402(a)(4)—when shipped, the article had been prepared and wrapped under insanitary conditions whereby it may have become contaminated with filth.

PLEA: Guilty.

DISPOSITION: 6-1-64. Partnership—\$1,800 fine; Bruno—\$1,800 fine, plus costs.

29507. English muffins. (F.D.C. No. 49696. S. No. 31-210 X.)

INFORMATION FILED: 4-1-64, S. Dist. Calif., against Korry's English Muffins, Inc., a corporation, Sid Korry, president, and Sol Korchek, treasurer, Los Angeles, Calif.

SHIPPED: 7-8-63, from Los Angeles, Calif., to Phoenix, Ariz.

LABEL IN PART: (Pkg.) "THE NEW ENRICHED KORRY'S ENGLISH MUFFINS MIN. NET WT. 9 OZ."

CHARGE: 402(a)(3)—contained insect fragments; and 402(a)(4)—prepared, packed, and held under insanitary conditions whereby it may have become contaminated with filth.

PLEA: Guilty.

DISPOSITION: 5-19-64. Corporation—\$750 fine; Korry—\$200 fine; Korchek—\$200 fine.

29508. Melba toast. (F.D.C. No. 49666. S. Nos. 77-239/40 X.)

QUANTITY: 82 cases, each containing 12 pkgs., at Brooklyn, N.Y.

SHIPPED: Between 9-10-63 and 9-25-63, from New Orleans, La., by Turnbull Cone Baking Co.

LABEL IN PART: (Pkg.) "Turnbull Rye Flavored Rounds * * * Melba Toast Baked by Turnbull Cone Baking Co. * * * New Orleans 25, Louisiana * * * Net Wt. 4 Ozs."

RESULTS OF INVESTIGATION: The article was found to be approximately 10 percent short weight.

LIBELED: 1-7-64, E. Dist. N.Y.

CHARGE: 403(e)(2)—when shipped, the article failed to bear an accurate statement of the quantity of the contents.

DISPOSITION: 4-13-64. Default—ordered delivered to a charitable institution, or, if not accepted, to be destroyed.

29509. Spanish Bar cookies, flour, and raisins. (F.D.C. No. 49688. S. Nos. 16-826/7 X, 16-819 X, 54-404/5 X.)

INFORMATION FILED: 3-6-64, M. Dist. Tenn., against American Bread Co., a corporation, Nashville, Tenn., Frank B. Evers, Sr., president, George R. Hogan,

vice president in charge of production, and Richard L. Pettigrew, executive vice president and secretary.

ALLEGED VIOLATIONS: On 7-24-63, the defendants shipped Spanish Bar cookies from Nashville, Tenn., to Athens, Ala., and to Fort Campbell, Ky. In addition, between 5-7-63 and 7-25-63, the defendants caused quantities of flour and raisins, while held for sale after shipment in interstate commerce, to be held in a building accessible to insects and to be exposed to contamination by insects, which acts resulted in such articles being adulterated.

CHARGE: 402(a)(3)—the Spanish Bar cookies contained insects and insect fragments; the flour and raisins contained larvae and insects; and 402(a)(4)—the cookies were prepared under insanitary conditions and the flour and raisins were held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-30-64. Each defendant fined \$1,000.

FLOUR*

29510. Flour. (F.D.C. No. 49448. S. No. 48-186 X.)

QUANTITY: 24 100-lb. bags of flour at Honolulu, Hawaii.

SHIPPED: 5-9-63 and 9-19-63, from Seattle, Wash.

LIBELED: 11-12-63, Dist. Hawaii.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 12-12-63. Default—destruction.

29511. Flour. (F.D.C. No. 49668. S. Nos. 8-849 X, 8-851 X.)

QUANTITY: 89 100-lb. bags of flour, at Newport, R.I., in possession of Standard Wholesale Co., Inc.

SHIPPED: 9-17-63, from Buffalo, N.Y.

LIBELED: 12-31-63, Dist. R.I.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-11-64. Default—destruction.

29512. Flour. (F.D.C. No. 49585. S. No. 59-434 X.)

QUANTITY: 32 100-lb. bags at McCook, Nebr., in possession of Fallick Baking Co.

SHIPPED: 12-2-63, from Sioux City, Iowa.

LIBELED: 1-9-64, Dist. Nebr.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-25-64. Default—destruction.

29513. Flour. (F.D.C. No. 49593. S. Nos. 47-592/3 X.)

QUANTITY: 27 50-lb. bags, at El Dorado Springs, Mo., in possession of El Dorado Wholesale Grocery.

SHIPPED: 7-8-63 and 10-3-63, from Wichita, Kans.

LIBELED: 1-8-64, W. Dist. Mo.

*See also Nos. 29509, 29519.

CHARGE: 402(a)(3)—contained insects, cockroach excreta pellets, and rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-25-64. Default—delivered to a charitable institution for use as animal feed.

29514. Flour. (F.D.C. No. 49832. S. No. 97-038 A.)

QUANTITY: 112 100-lb. bags at Winnemucca, Nev., in possession of Hoofits Bakery.

SHIPPED: 1-15-64, from Ogden, Utah.

LIBELED: 3-13-64, Dist. Nev.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-28-64. Default—destruction.

29515. Self-rising flour. (F.D.C. No. 49579. S. No. 37-868 X.)

QUANTITY: 140 25-lb. bags at Colfax, La., in possession of Central Wholesale Grocery Co.

SHIPPED: 10-21-63 and 10-25-63, from Shawnee, Okla.

LIBELED: 1-7-64, W. Dist. La.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 2-18-64. Default—delivered to a public institution for use as animal feed.

29516. Self-rising flour. (F.D.C. No. 49135. S. Nos. 36-759/60 V, 36-980 V.)

INFORMATION FILED: 8-23-63, N. Dist. Ala., against Ragland Bros. Co., a corporation, Huntsville, Ala.

ALLEGED VIOLATIONS: Between 11-13-62 and 2-28-63, while quantities of flour were being held for sale after shipment in interstate commerce, the defendant caused the flour to be held in a building that was accessible to birds and rodents, and did cause the flour to be exposed to contamination by birds and rodents, which acts resulted in the flour being adulterated.

CHARGE: 402(a)(3)—one lot contained rodent urine and one lot contained rodent hairs; and 402(a)(4)—all lots held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-20-64. \$500 fine.

29517. Self-rising flour and long grain rice. (F.D.C. No. 49692. S. Nos. 1-909 X, 1-912 X.)

INFORMATION FILED: 3-2-64, M. Dist. Ga., against J. H. Harvey Co., Inc., Nashville, Ga.

ALLEGED VIOLATIONS: Between 2-19-63 and 7-15-63, while quantities of flour and rice were being held for sale after shipment in interstate commerce, the defendant caused the articles to be held in a building that was accessible to rodents and to be exposed to contamination by rodents, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained rodent urine (rice) and rodent hairs (flour); and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 3-30-64. \$500 fine.

MACARONI AND NOODLE PRODUCTS

29518. Macaroni, grits, and egg noodles. (F.D.C. No. 49973. S. Nos. 1-182/3 A, 2-506 A.)

QUANTITY: 22 cases, each containing 24 7-oz. pkgs. of macaroni; 10 bales, each containing 12 2-lb. bags of grits; and 5 cases, each containing 12 1-lb. bags of egg noodles; at Lincolnton, N.C., in possession of Dixie Grocery Co., Inc.

SHIPPED: Between 1-1-63 and 12-31-64, from Harrisburg, Pa., Birmingham, Ala., and Omaha, Nebr.

LIBELED: 4-10-64, W. Dist, N.C.

CHARGE: 402(a)(3)—Contained insects, insect larvae, and insect fragments; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 5-15-64. Default—destruction.

29519. Various macaroni products, flour, rice. (F.D.C. No. 48619. S. Nos. 17-537/9 V, 17-542/3 V.)

QUANTITY: 5 20-lb. cases of rigatoni; 23 10-lb. cases of alphabets; 19 20-lb. cases of long macaroni; 78 50-lb. bags of flour; and 7 25-lb. bags of rice; at Dayton, Ohio, in possession of the C. N. Stemper Co.

SHIPPED: Between 2-6-61 and 11-10-62, from Milwaukee, Wis., Chicago, Ill., and Stuttgart, Ark.

LIBELED: 1-30-63, S. Dist. Ohio.

CHARGE: 402(a)(3)—the rigatoni contained insects, the alphabets and long macaroni contained insects and insect larvae, the flour contained rodent urine; and 402(a)(4)—all the articles held under insanitary conditions.

DISPOSITION: 2-27-63. Default—destruction.

29520. Noodles. (F.D.C. No. 49557. S. No. 32-206 X.)

QUANTITY: 24 cases, each containing 24 7-oz. bags, at Los Angeles, Calif.

SHIPPED: 10-17-63, from Honolulu, Hawaii, by Eagle Macaroni Co., Ltd.

LABEL IN PART: (Bag) "Made In Hawaii Eagle Saimin Not Egg Noodles
* * * Manufactured By Eagle Macaroni Company, Ltd., Honolulu, Hawaii
* * * Distributed by Eagle Merchandising Co., Honolulu, Hawaii."

LIBELED: 12-9-63, S. Dist. Calif.

CHARGE: 402(a)(3)—contained insect parts and insect fragments; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-16-64. Default—destruction.

29521. Noodles. (F.D.C. No. 49842. S. No. 62-493 A.)

QUANTITY: 26 cases, each containing 24 7-oz. bags, at Los Angeles, Calif.

SHIPPED: 2-17-64, from Honolulu, Hawaii, by Eagle Macaroni Co., Ltd.

LABEL IN PART: (Bag) "Eagle Saimin Not Egg Noodles—Manufactured By Eagle Macaroni Company, Ltd., Honolulu, Hawaii * * * Distributed by Eagle Merchandising Co., Honolulu, Hawaii."

LIBELED: 3-19-64, S. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent excreta pellets, insects, insect fragments, and rodent hair; and 402(a)(4)—prepared and packed under unsanitary conditions.

DISPOSITION: 4-9-64. Default—destruction.

29522. Egg noodles. (F.D.C. No. 49684. S. Nos. 4-386 V, 15-277/9 V.)

INFORMATION FILED: 4-9-64, N. Dist. Ill., against Walter H. Schoneberger, Chicago, Ill.

SHIPPED: Between 12-24-62 and 1-30-63, from Chicago, Ill., to Indianapolis, Ind., and Washington, D.C.

LABEL IN PART: (Case) "MEDIUM [or "BROAD"] ENRICHED PERRY'S BRAND KLUSKI EGG NOODLES 10 LBS NET"; "MEDIUM ENRICHED KO-WE-BA Brand POLISH (KLUSKI) NOODLES Net Weight 10 Lbs."; and "ENRICHED GOLD SPUN Home Style EGG NOODLES Contains the finest Durum Flour, 5.5% Egg Solids, Salt SCHONEBERGER & SONS, CHICAGO, ILL. America's Largest Exclusive Noodle Manufacturers 'There's a Reason' 10 LBS NET WT."

CHARGE: 402(b)(1)—when shipped, a valuable constituent, egg solids, had been in part omitted from the article; 403(g)(1)—the articles failed to conform to the definition and standard for egg noodles, or noodles, since the articles failed to contain not less than 5.5 percent by weight of the solids of egg or egg yolk.

PLEA: Nolo contendere.

DISPOSITION: 4-29-64. \$150 fine, plus costs.

MISCELLANEOUS CEREALS*

29523. Rice. (F.D.C. No. 49456. S. No. 74-280 X.)

QUANTITY: 9 100-lb. bags at St. Louis, Mo.

SHIPPED: 2-4-63, from Stuttgart, Ark.

LIBELED: 11-22-63, E. Dist. Mo.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 1-28-64. Default—delivered to a State agency for use as animal feed.

29524. Rice. (F.D.C. No. 49604. S. No. 69-141 A.)

QUANTITY: 15 100-lb. bags at Minneapolis, Minn., in possession of North Star Warehouse, Inc.

SHIPPED: 3-28-63, from Carlisle, Ark.

LIBELED: 1-22-64, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under unsanitary conditions.

DISPOSITION: 3-9-64. Default—ordered destroyed or denatured.

29525. Rice. (F.D.C. No. 49814. S. No. 97-034 A.)

QUANTITY: 29 100-lb. bags, at Sacramento, Calif., in possession of North American Food Distributing Co.

*See also Nos. 29518, 29519.

SHIPPED: 11-11-63, from Houston, Tex.

LIBELED: 2-25-64, N. Dist. Calif.

CHARGE: 402(a)(3)—contained rodent urine; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 3-26-64. Default—destruction.

29526. Rice. (F.D.C. No. 49148. S. Nos. 59-951/2 R.)

INFORMATION FILED: 10-23-63, W. Dist. Wash., against Associated Grocers, Inc., Seattle, Wash., and Willard E. Rhodes, president.

ALLEGED VIOLATIONS: Between 2-17-61 and 6-14-61, while quantities of rice were held for sale after shipment in interstate commerce, the defendants caused the rice to be held in a building that was accessible to birds and to be exposed to contamination by birds, which act resulted in the rice being adulterated.

CHARGE: 402(a)(3)—contained bird excreta; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty by the corporation; nolo contendere by the individual.

DISPOSITION: 4-13-64. Corporation—\$1,000 fine, plus costs; individual—\$100 fine.

29527. Rice. (F.D.C. No. 49824. S. No. 45-018 A.)

QUANTITY: 13 100-lb. bags at Twin Falls, Idaho, in possession of General Wholesale Co.

SHIPPED: Between 10-18-63 and 12-5-63, from Salt Lake City, Utah.

LIBELED: 3-11-64, Dist. Idaho.

CHARGE: 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-22-64. Default—destruction.

29528. Wheat. (F.D.C. No. 48512. S. No. 26-324 V.)

QUANTITY: 112,320 lbs. at Ottawa Lake, Mich.

SHIPPED: 12-29-62, from New Haven, Mich., by New Haven Farmer's Elevator Co., to Detroit, Mich., and from there to Toledo, Ohio, where it was reshipped to Ottawa Lake, Mich.

LIBELED: 1-9-63, E. Dist. Mich.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 2-25-63. Consent—claimed by Frutchey Bean Co., Ottawa Lake, Mich., and reconditioned.

29529. Wheat. (F.D.C. No. 49600. S. No. 55-543 A.)

QUANTITY: 91,200 lbs. at Kansas City, Kans.

SHIPPED: 1-2-64, from McDonald, Kans., by McDonald Grain Co.

LIBELED: 1-16-64, Dist. Kans.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 2-5-64. Consent—claimed by Simonds-Shields-Theis Grain Co. Reconditioned—5,350 lbs. segregated as unfit.

29530. Wheat. (F.D.C. No. 49810. S. No. 103-315 A.)

QUANTITY: 86,320 lbs. at Spokane, Wash.

SHIPPED: 2-7-64, from Hamilton, Mont., by Teslow, Inc.

LIBELED: 2-19-64, E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 2-27-64. Consent—claimed by Atwood-Larson Co., Inc., Portland, Oreg., and denatured.

29531. Wheat. (F.D.C. No. 49799. S. No. 55-953 A.)

QUANTITY: 90,600 lbs. at Newton, Kans.

SHIPPED: 1-30-64, from Mount Clare, Nebr., by Mount Clare Grain Co.

LIBELED: 2-17-64, Dist. Kans.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 3-25-64. Consent—claimed by Lynch Elevator & Feed Co., Inc. Reconditioned and segregated—7,440 lbs. denatured.

29532. Wheat. (F.D.C. No. 49850. S. No. 103-323 A.)

QUANTITY: 120,490 lbs. at Spokane, Wash.

SHIPPED: 3-4-64, from Gildford, Mont., by General Mills, Inc.

LIBELED: 3-20-64, E. Dist. Wash.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 3-26-64. Consent—claimed by Boyd-Conlee Co., Spokane, Wash., and denatured for use as animal feed.

29533. Wheat. (F.D.C. No. 49839. S. No. 71-955 A.)

QUANTITY: 124,200 lbs. at Minneapolis, Minn.

SHIPPED: 2-26-64, from Drayton, N. Dak., by Drayton Farmers Union Elevator Co.

LIBELED: 3-12-64, Dist. Minn.

CHARGE: 402(a)(3)—contained rodent excreta pellets when shipped.

DISPOSITION: 4-1-64. Consent—claimed by Drayton Farmers Union Elevator Co., and denatured.

29534. Unpopped popcorn. (F.D.C. No. 49829. S. No. 6-419 A.)

QUANTITY: 91 cases, each containing 24 1-lb. bags, at South Boston, Va.

SHIPPED: 10-29-62, from Murray, Ky.

LIBELED: 3-10-64, W. Dist. Va.

CHARGE: 402(a)(3)—contained insects and insect excreta while held for sale.

DISPOSITION: 4-24-64. Default—delivered to a public institution for use as animal feed.

29535. Unpopped popcorn. (F.D.C. No. 49631. S. Nos. 69-939/40 X.)

QUANTITY: 330 100-lb. bags and 17 50-lb. bags, at Dallas, Tex.

SHIPPED: Between 8-31-63 and 10-22-63, from Holdrege, Nebr., and North Fairfield, Ohio.

LIBELED: On or about 12-2-63, N. Dist. Tex.

CHARGE: 402(a)(3)—contained insects while held for sale.

DISPOSITION: 3-3-64. Consent—claimed by Food Tech Corp. Segregated and reconditioned; 250 lbs. destroyed.

29536. Unpopped popcorn. (F.D.C. No. 49754. S. No. 38-961 A.)

QUANTITY: 268 cases, each containing 6 4-lb. pkgs., at Irving, Tex., in possession of Wyatt Food Stores.

SHIPPED: 11-14-63, from Wall Lake, Iowa.

LIBELED: On or about 1-27-64, N. Dist. Tex.

CHARGE: 402(a)(3)—contained rodent excreta pellets, rodent hairs, rodent nesting material and rodent-gnawed kernels; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 4-16-64. Default—destruction.

29537. Unpopped popcorn. (F.D.C. No. 49835. S. Nos. 55-755/9 A.)

QUANTITY: 88 cases, each containing 12 32-oz. bags of yellow popcorn; 162 cases, each containing 6 4-lb. bags of yellow popcorn; 132 cases, each containing 12 32-oz. bags of white popcorn; and 116 cases, each containing 6 4-lb. bags of white popcorn and 25 100-lb. bags of yellow popcorn, at Council Bluffs, Iowa.

SHIPPED: 2-5-64, from Milwaukie, Oreg., by East Portland Warehouse Co.
This was a return shipment.

LABEL IN PART: (Bag) "Popcorn * * * Council Bluffs, Iowa."

LIBELED: 3-12-64, S. Dist. Iowa.

CHARGE: 402(a)(3)—contained live and dead insects, insect fragments, and insect excreta when shipped.

DISPOSITION: 4-28-64. Default—destruction.

DAIRY PRODUCTS

BUTTER

29538. Butter. (F.D.C. No. 43691. S. No. 59-761 P.)

INFORMATION FILED: 12-4-59, Dist. Md., against Potomac Creamery Co., Inc., Hagerstown, Md., William G. McKay, president, and Francis McKay, plant superintendent.

SHIPPED: 7-22-59, from Maryland to Pennsylvania.

LABEL IN PART: "Potomac BRAND ONE POUND NET CREAMERY BUTTER MADE FROM SELECTED SWEET CREAM POTOMAC CREAMERY CO. INC., HAGERSTOWN, MD."

CHARGE: 402(a)(3)—when shipped, contained a decomposed substance by reason of having been manufactured from rotten cream; 402(b)(1)—the valuable constituent, milk fat, had been in part omitted from the article; 402(b)(2)—a product containing less than 80 percent by weight of milk fat had been substituted for butter; and 403(a)—the label was false and misleading since it indicated that the article had been made from selected sweet cream.

PLEA: Not guilty.

DISPOSITION: The case came to trial before the court without a jury on 3-6-61, and was concluded on 3-8-61. The defendants were found guilty of the adulteration charges and not guilty of the misbranding charge. The court imposed the following fines: Corporation—\$500 fine; William G. McKay—\$400 fine; Francis McKay—\$100 fine; plus costs, against each defendant.

29539. Butter. (F.D.C. No. 47643. S. No. 33-806 V.)

QUANTITY: 6 boxes, each containing 64 lbs., at Faribault, Minn.

SHIPPED: 10-29-62, from Chester, Iowa, by Chester Creamery Co.

LABEL IN PART: (Box) "Creamery Butter."

LIBELED: 11-5-62, Dist. Minn.

CHARGE: 402(b)(2)—when shipped, a product containing less than 80 percent by weight of milk fat had been substituted for butter.

DISPOSITION: 1-9-63. Default—delivered to a public institution.

CHEESE

29540. Cheddar cheese. (F.D.C. No. 49589. S. No. 58-465 X.)

QUANTITY: 18 cases, each containing 4 12-lb. longhorns, at Los Angeles, Calif.

SHIPPED: 12-13-63, from Salt Lake City, Utah, by Brooklawn Creamery Co.

LIBELED: 1-7-64, S. Dist. Calif.

CHARGE: 402(a)(2)(C)—when shipped, the article contained dieldrin, a food additive, which is unsafe within the meaning of 409, since it, its use, or intended use were not in conformity with a regulation or exemption.

DISPOSITION: 1-30-64. Default—destruction.

29541. Cheddar cheese. (F.D.C. No. 50033. S. No. 44-470 A.)

QUANTITY: 110 lbs., packed 6 5-lb. loaves to a box, at Lyman, Wyo.

SHIPPED: 2-10-64, from Salt Lake City, Utah, by Brooklawn Creamery Co.

LABEL IN PART: (Box) "Factory No. 10 * * * Brooklawn Cheddar Cheese
Manufactured by Brooklawn Creamery Company, Salt Lake City, Utah."

LIBELED: 3-27-64, Dist. Wyo.

CHARGE: 402(a)(2)(C)—when shipped, the article contained dieldrin, a food additive, which is unsafe within the meaning of 409, since it, its use, or intended use were not in conformity with **a regulation or exemption.**

DISPOSITION: 5-1-64. Default—destruction.

29542. Cheddar cheese. (F.D.C. No. 49937. S. No. 61-105 A.)

QUANTITY: 10 ctns., each containing 4 12-lb. longhorns, at Phoenix, Ariz.

SHIPPED: 1-3-64 and 1-17-64, from Salt Lake City, Utah, by Brooklawn Creamery Co.

LABEL IN PART: (Ctn.) "Brooklawn Pasteurized Whole Milk Rindless Longhorn Cheddar Cheese Manufactured by Brooklawn Creamery Company General Offices—Salt Lake City—Utah Factory No. 10."

LIBELED: 3-23-64, Dist. Ariz.

CHARGE: 402(a)(2)(C)—when shipped, the article contained dieldrin, a food additive, which was unsafe within the meaning of 409, since it, its use, or intended use were not in conformity with a regulation or exemption.

DISPOSITION: 5-14-64. Default—destruction.

MISCELLANEOUS DAIRY PRODUCT

29543. Nonfat dry milk solids. (F.D.C. No. 49672. S. Nos. 2-486/88 X.)

QUANTITY: 213 bags at Miami, Fla.

SHIPPED: 10-30-63, from Watertown, Wis., by William Fitzgerald Milk Products Corp.

LABEL IN PART: (Bag) "Extra Grade Nonfat Dry Milk Solids 100 Lbs. Net."

LIBELED: 1-3-64, S. Dist. Fla.

CHARGE: 402(a)(3)—when shipped, the article consisted in whole or in part of a filthy substance and was otherwise unfit for food by reason of the presence therein of insect fragments, pieces of wood, bristles, pieces of wire, sand, soil and nondescript dirt; 403(a)—the label statement "Extra Grade" was false and misleading as applied to a product containing insect fragments, pieces of wood, pieces of wire, bristles, sand, soil and nondescript dirt; 403(e)(1)—the label failed to bear the name and address of the manufacturer, packer, or distributor.

DISPOSITION: 3-11-64. Consent—claimed by William Fitzgerald Milk Products Corp., for denaturing for use as animal feed.

FISH AND SHELLFISH

29544. Breaded fish fillets. (F.D.C. No. 47281. S. Nos. 29-988/9 T.)

QUANTITY: 99 cases, each containing 12 4-lb. pkgs., at Spirit Lake, Iowa.

SHIPPED: Prior to 3-8-62, from Gloucester, Mass., by Gorton's of Gloucester, Inc.

LIBELED: 4-3-62, N. Dist. Iowa.

CHARGE: 403(e)—when shipped, the article failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of contents; and 403(i)—the label failed to bear (1) the common or usual name of the food and (2) the common or usual name of each ingredient.

DISPOSITION: 5-5-62. Consent—claimed by Gorton's of Gloucester, Inc., and relabeled.

29545. Frozen ocean perch fillets. (F.D.C. No. 49493. S. No. 7-026 X.)

QUANTITY: 157 master ctns., each containing 5 10-lb. ctns. of frozen fish fillets, at Gloucester, Mass.

SHIPPED: The fillets were prepared from fish caught by the fishing vessel "Malolo" in the waters of the Atlantic Ocean outside the territorial limits of Massachusetts, and landed at Gloucester, Mass., on 10-3-63.

LABEL IN PART: (Master ctn.) "North Atlantic LP Ocean Perch * * * Keep Frozen Perishable."

LIBELED: 11-5-63, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 3-4-64. Consent—claimed by North Atlantic Fish Co., Inc., Gloucester, Mass., and reconditioned.

29546. Frozen ocean perch fillets. (F.D.C. No. 49361. S. No. 7-889 X.)

QUANTITY: 95 10-lb. ctns. at Boston, Mass.

SHIPPED: The fillets were prepared from fish caught by the fishing vessel "Grace and Salvatore" in the waters of the Atlantic Ocean outside the territorial limits of Massachusetts, and landed at Boston, Mass., on 9-4-63.

LABEL IN PART: (Insert label) "Schooner Brand Frosted Ocean Perch Fillets To Be Weighed At Time Of Sale 20 Fish Pier Blue Sea Fish Co. Boston, Mass."

LIBELED: 9-30-63, Dist. Mass.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 12-5-63. Consent—claimed by Channel Fish Co., Boston, Mass., and reconditioned.

29547. Frozen ocean perch fillets. (F.D.C. No. 50106. S. No. 14-381 A.)

QUANTITY: 492 cases, each containing 12 ctns., at Rockland, Maine.

SHIPPED: The article was prepared from fish caught by the fishing vessels "Mabel Susan" and "Elin-B" in the waters of the Atlantic Ocean outside the territorial limits of Maine, and landed at Rockland, Maine, on 4-14-64.

LABEL IN PART: (Ctn.) "Cap'n Johns Quick Frozen Fillets Uncooked Ocean Perch Net Wt. 1 Pound The Great Atlantic and Pacific Tea Company New York, N.Y. Distributors."

LIBELED: 5-4-64, Dist. Maine.

CHARGE: 402(a)(3)—contained parasitic copepods when shipped.

DISPOSITION: 5-20-64. Consent—claimed by 40-Fathom Fisheries, Inc., Rockland, Maine, and reconditioned.

29548. Canned tunafish. (F.D.C. No. 44527. S. No. 31-395 R.)

QUANTITY: 600 cases, each containing 48 6-oz. cans, at Houston, Tex.

SHIPPED: 2-24-60, from Terminal Island, Calif., by Pan-Pacific Fisheries.

LABEL IN PART: (Can) "Save-All Brand Dark and Light Flaked Tuna * * * Packed For Save-All Company, Terminal Island, Calif."

LIBELED: On or about 7-19-60, S. Dist. Tex.

CHARGE: 403(g)(1)—when shipped, the article purported to be and was represented as canned tuna, a food for which a definition and standard of identity has been prescribed and it failed to conform to such definition and standard since it contained scales and bones, which are not permitted as optional ingredients.

DISPOSITION: 11-22-60. Consent—claimed by Save-All Co., Terminal Island, Calif., and relabeled as cat food.

29549. Frozen flounder. (F.D.C. No. 50152. S. Nos. 74-556/7 A.)

QUANTITY: 36 15-lb. cases at Jackson, Miss.

SHIPPED: 3-4-64 and 4-22-64, from Bayou La Batre, Ala., by Ramos Shrimp Co.

LABEL IN PART: (Case) "Coffee Island Brand Frozen Flounder Packed by Ramos Shrimp Co. Bayou La Batre."

LIBELED: On or about 5-20-64, S. Dist. Miss.

CHARGE: 402(a)(3)—contained decomposed fish when shipped.

DISPOSITION: 7-9-64. Default—destruction.

29550. Frozen walleyed fillets. (F.D.C. No. 49805. S. No. 71-541 A.)

QUANTITY: 98 boxes, each containing 13½ lbs., at West Fargo, N. Dak.

SHIPPED: 12-14-63, from Winnipeg, Canada, by Laurie Thompson.

LABEL IN PART: (Box) "Quick Frozen Delicia Pac Fillets Product of Canada * * * Packed by Manitoba Fisheries Ltd. Winnipeg—Canada."

LIBELED: 2-17-64, Dist. N. Dak.

CHARGE: 402(a)(3)—contained decomposed fish when shipped.

DISPOSITION: 4-24-64. Default—destruction.

29551. Frozen smelt. (F.D.C. No. 49613. S. No. 24-713 A.)

QUANTITY: 575 cases, each containing 12 1-lb. pkgs., at Green Bay, Wis.

SHIPPED: 11-27-63, from Detroit, Mich., by J. Kozloff Fish Distributor, Inc.

LABEL IN PART: (Case) "Trays North Shore Brand Fast Frozen Dressed Smelt * * * Packed by East Erie Packing Company Head Office Port Dover, Ont., Product of Canada."

LIBELED: 2-4-64, E. Dist. Wis.

CHARGE: 402(a) (3)—contained decomposed fish when shipped.

DISPOSITION: 4-2-64. Consent—claimed by J. Kozloff Fish Distributor, Inc., for export to Canada.

29552. Canned oysters. (F.D.C. No. 48650. S. Nos. 5-605 V, 5-728 V.)

QUANTITY: 130 cases, each containing 12 12 oz. cans at Washington, D.C.

SHIPPED: Between 12-23-62 and 2-8-63, from Chicago, Ill., by Booth Fisheries Corp.

LABEL IN PART: (Can) "Oysters Booth Frozen * * * Distributed By Booth Fisheries Corporation * * * Chicago, Illinois."

RESULTS OF INVESTIGATION: Examination of two samples collected showed the average drained liquid to be 59.2 percent and 45.02 percent. The average number of oysters per can of each sample was found to be 10.7 and 13.08.

LIBELED: 2-25-63, Dist. Columbia.

CHARGE: 402(b) (2)—when shipped, water had been substituted in part for oysters.

DISPOSITION: 4-1-63. Default—delivered to a public institution.

29553. Frozen shrimp (2 seizure actions). (F.D.C. Nos. 48236; 48239. S. Nos. 19-772/3 V; 20-002 V.)

QUANTITY: 14,535 lbs. and 11,700 lbs. at Brownsville, Tex.

SHIPPED: 9-20-62 and 9-28-62, from Managua, Nicaragua.

LIBELED: 10-17-62, S. Dist. Tex.

CHARGE: 402(a) (3)—contained decomposed shrimp while held for sale.

DISPOSITION: 11-6-62. Consent—claimed by Brownsville Shrimp Exchange & Cold Storage Corp. Segregated; 13,625 lbs. denatured for use as bait.

FRUITS AND VEGETABLES*

CANNED FRUIT

29554. Canned peaches. (F.D.C. No. 49403. S. No. 38-100 X.)

QUANTITY: 550 cases, each containing 24 1-lb. 12-oz. cans, at Monroe, La.

SHIPPED: 8-12-63, from Fort Valley, Ga., by Southern States Canning Co.

LABEL IN PART: (Can) "Elberta Brand Peeled Yellow Free Peaches Mixed Pieces and Halves of Irregular Sizes and Shapes in Light Syrup * * * Packed by Southern States Canning Co. Fort Valley, Ga."

LIBELED: 10-3-63, W. Dist. La.; libel amended 10-14-63.

CHARGE: 402(a) (3)—contained *Drosophila* flies; and 402(a) (4)—prepared and packed under insanitary conditions.

*See also No. 29509.

DISPOSITION: On 11-1-63, (the original libel having libeled only 121 cases of canned peaches) Southern States Canning Co., filed a motion for an extension of time within which to file responsive pleadings which motion represented, in part, that the Southern States Canning Co., was advised that the United States marshal had seized 550 cases of peaches; that the United States attorney was amending the original information of libel to read 550 cases of peaches rather than 121 cases of peaches, that the United States Food and Drug Administration had not condemned more than 121 cases of peaches and that the United States marshal acted without authority in the seizure of cases in excess of the 121 cases condemned by the Food and Drug Administration, and that possibly the code lot placed against these contaminated articles was only in the 121 cases of peaches and that the United States marshal erred in seizing peaches in excess of 121 cases.

On 12-3-63, upon motion of the Government, an order was entered permitting the Food and Drug Administration to obtain a representative sample for examination of the contents of the additional 429 cases of the article which had been seized. On 1-27-64, Southern States Canning Co., filed an answer in which the claimant represented: that official sampling had been handled improperly in that 121 cases only had been sampled whereas the United States marshal had seized 550 cases; that the claimant neither admitted nor denied the allegation of adulteration, contending that the lot of peaches as a whole had not been inspected; that the claimant's history was indicative of a reputable packing business; that the Food and Drug Administration had not taken samples of the 429-case lot as permitted by order of the court, and that the claimant had been advised by the United States attorney that the 429-case lot contained the same four can marks as the 121 cases analyzed originally and there was no reason to collect samples of the entire lot.

On 2-12-64, the Government filed a motion for summary judgment on the basis that all of the code lots seized had previously been tested and on the basis of the conditions which were found at the claimant's canning plant on 7-11-63 and 7-19-63. On 3-5-64, a default decree of condemnation was filed, and the article was donated to a governmental institution for use as animal food only.

29555. Canned peaches. (F.D.C. No. 49407. S. No. 25-910 X.)

QUANTITY: 678 cases of 24 cans each, at Bedford Heights, Ohio.

SHIPPED: 8-19-63, from Easley, S.C., by Jones Canning Co.

LABEL IN PART: (Can) "First Mate Halves Yellow Freestone Peaches in Heavy Syrup * * * Distributed by Seaway Foods, Inc., Cleveland, Ohio."

LIBELED: 10-11-63, N. Dist. Ohio.

CHARGE: 402(a)(3)—contained *Drosophila* flies and other insects; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 12-4-63. Consent—destruction.

29556. Canned plums. (F.D.C. No. 48771. S. No. 88-072 V.)

QUANTITY: 64 cases, of 24 cans each, at Livonia, Mich.

SHIPPED: 10-1-62, from Silverton, Oreg., by Kolstad Canneries, Inc.

LABEL IN PART: (Can) "Oregon Beauty Brand Purple Plums In Heavy Syrup Contents 1 Lb. 14 Oz.—Packed by Kolstad Canneries, Inc. Silverton, Oregon."

RESULTS OF INVESTIGATION: Examination showed that the article was approximately 2.07 percent short weight.

LIBELED: 5-13-63, E. Dist. Mich.

CHARGE: 403(e) (2)—when shipped, the article failed to bear a label containing an accurate statement of quantity of contents.

DISPOSITION: 6-11-63. Default—delivered to a public institution.

FROZEN FRUIT

29557. Frozen blueberries. (F.D.C. No. 43907. S. Nos. 11-809 P, 75-580 P.)

QUANTITY: 1,400 30-lb. unlabeled lugs at Chicago, Ill., in possession of Chicago Cold Storage Co.

SHIPPED: 8-17-59, from Quebec, Canada, by Alfred Tremblay.

RESULTS OF INVESTIGATION: The article was shipped fresh and was later frozen at Chicago Cold Storage Co.

LIBELED: 11-12-59, N. Dist. Ill.

CHARGE: 402(a) (3)—while held for sale, contained moldy, decomposed, blueberries, 403(e)—the article failed to bear a label containing (1) the name and place of business of the manufacturer, packer, or distributor and (2) an accurate statement of the quantity of contents; and 403(i) (1)—when shipped, the article failed to bear a label containing the common or usual name of the food.

DISPOSITION: The article was claimed by Lester Lawrence & Son, Inc., Chicago, Ill., and on 12-21-59, a consent decree of condemnation was entered and the article was released for the purpose of bringing it into compliance with the law. The time for complying with the terms of the decree was extended several times. Attempts at reconditioning were unsuccessful and, on 5-22-63, the article was destroyed.

VEGETABLES AND VEGETABLE PRODUCTS

29558. Dried navy beans. (F.D.C. No. 49646. S. No. 29-990 X.)

QUANTITY: 1,489 100-lb. bags, at Lawrence, Kans., in possession of Stokely-Van Camp Co., Inc.

SHIPPED: Between 11-12-63 and 11-19-63, from Lowell, Mich.

LIBELED: 12-17-63, Dist. Kans.

CHARGE: 402(a) (3)—contained bird excreta; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 2-5-64. Consent—claimed by Stokely-Van Camp, Inc. Segregated, 26 bags destroyed.

29559. Dried pinto beans. (F.D.C. No. 49793. S. Nos. 38-745/6 A.)

QUANTITY: 171 100-lb. bags at El Paso, Tex., in possession of Alfred M. Lewis, Inc.

SHIPPED: 8-27-63 and 10-5-63, from Denver, Colo.

LIBELED: 2-6-64, W. Dist. Tex.

CHARGE: 402(a) (3)—contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 3-12-64. Consent—claimed by Alfred M. Lewis, Inc. Segregated and reconditioned; 550 lbs. destroyed.

29560. Dried red beans and dried navy beans. (F.D.C. No. 48030. S. Nos. 84-038/9 T.)

QUANTITY: 3 100-lb. bags of red beans, and 10 100-lb. bags of navy beans, at Nevada, Mo., in possession of Denman Wholesale Grocery Co.

SHIPPED: Between 1-13-61 and 12-15-61, from Denver, Colo., and Saginaw, Mich.

LIBELED: 9-18-62, W. Dist. Mo.

CHARGE: 402(a) (3)—contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 12-14-62. Default—delivered to a public institution for use as animal feed.

29561. Dried lima beans and dried kidney beans. (F.D.C. No. 48342. S. Nos. 19-786/7 V.)

QUANTITY: 266 100-lb. bags of lima beans, and 96 100-lb. bags of kidney beans, at Westville, Okla.

SHIPPED: 5-31-62, from Denver, Colo., and on an unknown date from the State of Michigan.

LIBELED: 10-26-62, E. Dist. Okla.

CHARGE: 402(a) (3)—contained insects and insect-damaged beans while held for sale.

DISPOSITION: 12-31-62. Consent—claimed by Baron Canning Co., Westville, Okla. On 3-19-63, the article was converted into animal feed.

29562. Dried pigeon peas, black-eyed peas, and garbanzo beans. (F.D.C. No. 49953. S. Nos. 4-609/11 A.)

QUANTITY: 25 100-lb. bags of pigeon peas, 24 100-lb. bags of black-eyed peas, and 50 100-lb. bags of garbanzo beans at Seffner, Fla., in possession of Northwestern Canning & Packing Co.

SHIPPED: 1-9-64, from New York, N.Y., and 1-21-64, from Los Angeles and Irvine, Calif.

LIBELED: 3-31-64, M. Dist. Fla.

CHARGE: 402(a) (3)—contained rodent urine; and 402(a) (4)—held under insanitary conditions.

DISPOSITION: 6-2-64. Default—delivered to a public institution for use as animal feed.

29563. Dried lima beans. (F.D.C. No. 47288. S. No. 19-825 T.)

QUANTITY: 156 100-lb. bags at Mineola, Tex., in possession of Benham & Co., Inc.

SHIPPED: 1-5-62, from Westley, Calif.

LIBELED: 4-5-62, E. Dist. Tex.

CHARGE: 402(a) (4)—held under insanitary conditions while held for sale.

DISPOSITION: 7-5-62. Consent—claimed by Benham & Co., Inc., and reconditioned; 1,050 lbs. denatured.

29564. Canned mushrooms. (F.D.C. No. 48975. S. Nos. 71-189/92 V, 78-150/52 V.)

QUANTITY: 92 cases, each containing 12 1-lb. 9-oz. cans, at Detroit, Mich.

SHIPPED: Between 1-17-63 and 3-20-63, from Nottingham, Pa., by Nottingham Canning Co., Inc.

LABEL IN PART: (Can) "Nottingham Colossal Crown [or "Button" or "Special Crown" or "Sliced"] Mushrooms in Buttered Sauce * * * Packed by Nottingham Canning Co., Inc., Nottingham, Pa."

RESULTS OF INVESTIGATION: Examination showed that the article contained little or no butter and that the drained weight of the mushrooms was less than 16 ounces.

LIBELED: 5-24-63, E. Dist. Mich.

CHARGE: 402(b)(1)—when shipped, the valuable constituent of the article, butter, had been in whole or in part omitted or abstracted therefrom; 402(b)(2)—vegetable fat had been substituted in whole or in part for butter; 403(a)—the name of the article "Mushrooms in Buttered Sauce" was false and misleading as applied to a product containing little or no butter; 403(g)(1)—the article failed to conform to the definition and standard of identity for canned mushrooms since it contained vegetable fat which is not permitted as an ingredient of canned mushrooms in such definition and standard; and 403(h)(2)—the article fell below the standard of fill of container for canned mushrooms since the article was in containers designated in the trade as 307 x 510, having the overall dimensions of the sealed can as $3\frac{7}{16}$ inches in diameter and $5\frac{5}{8}$ inches in height, and the weight of drained mushrooms therein was less than 16 ounces avoirdupois.

DISPOSITION: 5-2-64. Consent—claimed by Nottingham Canning Co., Inc., and relabeled.

29565. Canned okra and tomatoes. (F.D.C. No. 48455. S. No. 36-818 V.)

QUANTITY: 366 cases, each containing 24 $15\frac{1}{2}$ -oz. cans, at Albany, Ga.

SHIPPED: 10-1-62, from Cullman, Ala., by Southern Shell Fish Co., Inc.

LABEL IN PART: (Can) "Blue Plate Okra and Tomatoes * * * Distributed By Southern Shell Fish Co., Inc., New Orleans, La."

LIBELED: 11-21-62, M. Dist. Ga.

CHARGE: 402(a)(3)—contained a decomposed substance when shipped.

DISPOSITION: 2-20-63. Default—destruction.

29566. Celery. (F.D.C. No. 43731. S. No. 22-001 R.)

QUANTITY: 486 crates, each containing 2 doz. stalks, at Detroit, Mich.

SHIPPED: 4-27-60, from Santa Ana, Calif., by Sakioka Farms.

LABEL IN PART: (Crate) "Blue Mink Brand Select Vegetables Produce of U.S.A. Growers, Packers and Shippers, Sakioka Farms Main Office Culver City California."

LIBELED: 6-7-60, E. Dist. Mich.

CHARGE: 402(a)(2)(B)—the article was a raw agricultural commodity and, when shipped, contained a pesticide chemical, namely, parathion, which is unsafe within the meaning of 408(a) since the quantity of such pesticide chemical on the article was not within the limits of the tolerance prescribed by regulation.

DISPOSITION: 7-7-60. Default—destruction.

TOMATOES AND TOMATO PRODUCTS

29567. Canned tomatoes. (F.D.C. No. 46671. S. Nos. 8-398 R, 96-828 R.)

INFORMATION FILED: 2-6-62 and 3-11-63, Dist. N.J., against Pappas Bros. & Gillies Co., Inc., Egg Harbor City, N.J., and Thomas J. Pappas, secretary-treasurer.

SHIPPED: 1-31-61 and 4-3-61, from New Jersey to Pennsylvania.

LABEL IN PART: (Can) "Sexton * * * Tomatoes Net Weight 6 lbs. 6 ozs. Distributed by John Sexton & Co. Chicago, Ill."

CHARGE: 402(a)(3)—both lots contained fly eggs and maggots; and 402(a)(4)—one lot was prepared under insanitary conditions.

PLEA: Guilty by the corporation to 2 counts; by Pappas to 1 count.

DISPOSITION: 12-6-62. Corporation—\$500 fine, and probation for 3 years. 4-19-63. Pappas—1 day in the custody of the marshal.

29568. Canned tomatoes. (F.D.C. No. 50054. S. No. 32-425 A.)

QUANTITY: 138 cases, each containing 24 1-lb. cans, at Paris, Ill.

SHIPPED: 3-13-64, from Morristown, Ind., by Morristown Canning Co., Inc.

LABEL IN PART: (Can) "Morristown Tomatoes * * * Packed By Morristown Canning Co., Inc., Morristown, Ind."

LIBELED: 4-23-64, E. Dist. Ill.

CHARGE: 403(h)(1)—when shipped, the quality of the article fell below the standard of quality for canned tomatoes since the article contained tomato peel per pound of canned tomatoes in the container which covered an area of more than one square inch.

DISPOSITION: 5-13-64. Default—ordered delivered to charitable or nonprofit-making organizations, or destroyed.

29569. Canned tomatoes. (F.D.C. No. 49998. S. No. 25-447 A.)

QUANTITY: 996 cases, containing 24 cans each, at Franklin Park, Ill.

SHIPPED: 3-19-64, from Morristown, Ind., by Morristown Canning Co., Inc.

LABEL IN PART: (Can) "Silver Cup * * * Tomatoes Net Wt. 1 Lb. * * * Packed for Central Grocers Cooperative, Inc. Franklin Park, Ill."

LIBELED: 4-28-64, N. Dist. Ill.

CHARGE: 403(h)(1)—when shipped, the quality of the article fell below the standard of quality for canned tomatoes due to excessive peel.

DISPOSITION: 5-15-64. Default—delivered to a charitable institution.

29570. Tomato paste. (F.D.C. No. 50139. S. No. 79-755 A.)

QUANTITY: 398 cases, each containing 96 6-oz. cans, at Elizabeth, N.J.

SHIPPED: 3-30-64, from Buena Park, Calif.

RESULTS OF INVESTIGATION: Examination showed that the article was undergoing progressive chemical decomposition.

LIBELED: On or about 5-14-64, Dist. N.J.

CHARGE: 402(a)(3)—contained a decomposed substance while held for sale.

DISPOSITION: 6-24-64. Default—destruction.

29571. Canned tomato puree. (F.D.C. No. 49919. S. Nos. 85-606/7 A.)
QUANTITY: 212 cases, each containing 6 6-lb. 9-oz. cans, at Trenton, N.J.
SHIPPED: 2-9-62, from Escalon, Calif.
RESULTS OF INVESTIGATION: Examination showed that the article was undergoing chemical decomposition.
LIBELED: On or about 3-26-64, Dist. N.J.
CHARGE: 402(a) (3)—contained a decomposed substance while held for sale.
DISPOSITION: 4-22-64. Default—destruction.

NUTS

29572. Shelled peanuts. (F.D.C. No. 49640. S. Nos. 20-681/82 X.)
QUANTITY: 616 120-lb. bags at Houston, Tex.
SHIPPED: 11-8-63 and 11-18-63, from Fitzgerald, Ga., by Dixie Peanut Co.
LABEL IN PART: (Tag on bag) "No. 1 Runner With Splits and Old Screens Packed by Dixie Peanut Co. Fitzgerald, Ga."
LIBELED: 12-12-63, S. Dist. Tex.
CHARGE: 402(a) (3)—contained insects; and 402(a) (4)—prepared and packed under insanitary conditions.
DISPOSITION: 1-9-64. Consent—claimed by Dixie Peanut Co. Segregated; 15 bags denatured for use as animal feed.

29573. Shelled Spanish peanuts. (F.D.C. No. 48430. S. No. 3-323 V.)
QUANTITY: 50 125-lb. bags at Boykins, Va.
SHIPPED: 10-22-62, from Fitzgerald, Ga., by Dixie Peanut Co.
LABEL IN PART: (Tag on bag) "No. 1 Spanish Peanuts Packed By Dixie Peanut Co. Fitzgerald, Ga."
LIBELED: 12-28-62, E. Dist. Va.
CHARGE: 402(a) (3)—contained insects, insect larvae, insect parts, and insect fragments; and 402(a) (4)—prepared and packed under insanitary conditions.
DISPOSITION: 2-15-63. Consent—claimed by Aster Nut Products, Inc., Newark, N.J.; 190 lbs. denatured.

29574. Shelled Spanish peanuts. (F.D.C. No. 49639. S. No. 93-500 X.)
QUANTITY: 312 125-lb. bags at Somerville, Mass.
SHIPPED: 11-13-63, from Fitzgerald, Ga., by Dixie Peanut Co.
LABEL IN PART: (Tag on bag) "No. 1 Spanish Peanuts Packed by Dixie Peanut Co. Fitzgerald, Ga."
LIBELED: 12-17-63, Dist. Mass.
CHARGE: 402(a) (3)—contained insects and rodent hairs; and 402(a) (4)—prepared and packed under insanitary conditions.
DISPOSITION: 1-17-64. Consent—claimed by Dixie Peanut Co. Segregated; 1,140 pounds denatured.

29575. Shelled Spanish peanuts. (F.D.C. No. 49552. S. No. 33-756 X.)
QUANTITY: 652 115-lb. bags at Minneapolis, Minn.
SHIPPED: 11-4-63, from Comanche, Tex., by Durham Peanut Co., Inc.

LABEL IN PART: (Bag tag) "Durham Peanut Co., Inc. Comanche Texas * * * Topper Brand Spanish Peanuts Spanish Graded No. 1."

LIBELED: 12-2-63, Dist. Minn.

CHARGE: 402(a)(3)—contained insects; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 1-23-64. Consent—claimed by Durham Peanut Co., and reconditioned.

29576. Shelled pecans. (F.D.C. No. 49610. S. Nos. 22-194 X, 72-630 X.)

QUANTITY: 4 30-lb. cases of extra large pecan pieces, and 43 30-lb. cases of large pecan pieces, at Denver, Colo.

SHIPPED: Between 11-20-63 and 12-3-63, from Yancey, Tex., by D. McCrea & Son, Inc.

LABEL IN PART: "Ex. Large Pieces [or "Large Pieces"] * * * Fiesta * * * Fancy Shelled Pecans Packed by D. McCrea & Son, Inc., Yancey, Texas."

LIBELED: 1-27-64, Dist. Colo.; libel amended 2-4-64.

CHARGE: 402(a)(3)—contained *E. coli* when shipped.

DISPOSITION: 3-17-64. Consent—claimed by D. McCrea & Son, Inc., for reconditioning.

29577. Shelled pecans. (F.D.C. No. 49826. S. No. 39-826 A.)

QUANTITY: 29 cases, each containing 12 6-oz. pkgs., at Enid, Okla.

SHIPPED: 1-24-64, from San Antonio, Tex., by Guadalupe Valley Pecan Co.

LABEL IN PART: (Pkg.) "Tom Thumb Pecans * * * Guadalupe Valley Pecan Co., San Antonio, Texas, U.S.A."

LIBELED: 3-6-64, W. Dist. Okla.

CHARGE: 402(a)(3)—contained *E. coli* when shipped.

DISPOSITION: 5-6-64. Default—converted into animal feed.

29578. Shelled pecans. (F.D.C. No. 49949. S. Nos. 54-921 A, 54-925/26 A.)

QUANTITY: 1 case, containing 24 1¾-oz. pkgs.; 2 cases, each containing 12 6-oz. pkgs.; and 27 cases, each containing 24 3-oz. pkgs.; at Hutchinson, Kans.

SHIPPED: Between 12-3-63 and 1-8-64, from San Antonio, Tex., by Guadalupe Valley Pecan Co.

LABEL IN PART: (1¾-oz. pkg.) "Ann Nutley's Pecan Chips * * * Chopped Pecans Guadalupe Valley Pecan Co., San Antonio, Texas"; (6-oz. and 3-oz. pkgs.) "Tom Thumb Cookie Pieces Pecans * * * Guadalupe Valley Pecan Co., San Antonio, Texas."

LIBELED: On or about 4-2-64, Dist. Kans.

CHARGE: 402(a)(3)—contained *E. coli* when shipped.

DISPOSITION: 5-19-64. Default—destruction.

29579. Shelled pecans. (F.D.C. No. 50048. S. No. 34-935 A.)

QUANTITY: 100 30-lb. ctns. at Cincinnati, Ohio.

SHIPPED: 2-11-64, from Andalusia, Ala., by Pet Milk Co., Funsten Div.

LABEL IN PART: (Ctn.) "Funsten Medium Select Pecan Pieces Pet Milk Company, Funsten Division, St. Louis, Mo."

LIBELED: 4-14-64, S. Dist. Ohio.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 4-24-64. Default—destruction.

29580. Shelled pecans. (F.D.C. No. 49986. S. No. 1-669 A.)

QUANTITY: 171 30-lb. ctns. at Spartanburg, S.C.

SHIPPED: 2-12-64, from Andalusia, Ala., by Pet Milk Co., Funsten Div.

LABEL IN PART: (Ctn.) "Funsten Choice Midgets * * * Pecan Pieces Pet Milk Company, Funsten Division St. Louis, Mo."

LIBELED: 4-24-64, W. Dist. S.C.

CHARGE: 402(a)(3)—contained *E. coli*; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 5-18-64. Consent—claimed by Pet Milk Co., for reconditioning.

29581. Shelled pecans. (F.D.C. No. 50049. S. No. 69-342 A.)

QUANTITY: 4 30-lb. ctns. at Stillwater, Minn.

SHIPPED: 2-21-64, from Muskogee, Okla., by Pet Milk Co., Funsten Div.

LABEL IN PART: (Ctn.) "Funsten Kingtopper Select Pecan Halves Pet Milk Company, Funsten Division, St. Louis, Mo."

LIBELED: 4-16-64, Dist. Minn.

CHARGE: 402(a)(3)—contained *E. coli* when shipped.

DISPOSITION: 5-28-64. Default—destruction.

29582. Unshelled mixed nuts and filberts. (F.D.C. Nos. 49568, 49571. S. Nos. 94-523/4 X.)

QUANTITY: 63 100-lb. bags of mixed nuts, and 18 100-lb. bags of filberts at Grand Junction, Colo.

SHIPPED: 10-30-63 and 11-7-63, from Portland, Oreg., by Hudson House, Inc.

LABEL IN PART: (Bag) "Large Oregon No. 1 Filberts Barcelona Packed For Snoboy, Inc. Minneapolis, Minn. Seattle, Wash." (bag) "Nation's Garden Brand Mixed Nuts Select Packed For Fine Foods, Inc. Minneapolis, Minn. Seattle, Wash."

LIBELED: 12-20-63, Dist. Colo.

CHARGE: 402(a)(3)—contained insects, moldy nuts, shriveled nuts, and empty shells when shipped.

DISPOSITION: 2-18-64. Consent—claimed by Hudson House, Inc., for reconditioning.

29583. Shelled walnuts. (F.D.C. No. 49811. S. No. 19-043 A.)

QUANTITY: 50 25-lb. cases at Johnstown, Pa.

SHIPPED: 12-27-63, from Detroit, Mich., by Hudson House, Inc.

LABEL IN PART: (Case) "Pride of Oregon Brand Oregon Shelled Walnuts State of Oregon Packed by 126 Hudson House, Inc., * * * Portland, Ore."

LIBELED: 2-20-64, W. Dist. Pa.

CHARGE: 402(a)(3)—contained *E. coli* and insects when shipped.

DISPOSITION: 6-3-64. Consent—claimed by Hudson House, Inc., Portland, Oreg., for reconditioning.

SPICES, FLAVORS, AND SEASONING MATERIALS

29584. Ground nutmeg. (F.D.C. No. 48802. S. No. 68-648 V.)

QUANTITY: 50 pkgs., each containing 12 cans, at Washington, D.C.

SHIPPED: Between 1-10-63 and 2-21-63, from Baltimore, Md., by McCormick & Co., Inc.

LABEL IN PART: (Can) "McCormick Ground Nutmeg 1-½ Ozs. Net Wt. * * * McCormick & Co., Inc., Baltimore, Md. San Francisco, Calif."

RESULTS OF INVESTIGATION: Examination showed that the article was approximately 7.33 percent short weight.

LIBELED: 3-8-63, Dist. Columbia.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of the contents.

DISPOSITION: 4-4-63. Default—delivered to a public institution for use and not for sale.

29585. Chili seeds. (F.D.C. No. 48959. S. No. 13-180 V.)

QUANTITY: 41 unlabeled 70-lb. bags of chili seeds, and 55 drums of ground chili seeds weighing 5,000 lbs., at Chicago, Ill.

SHIPPED: 6-20-62, from Los Angeles, Calif.

LIBELED: 5-13-63, N. Dist. Ill.; amended libel 5-21-63.

CHARGE: 402(a)(3)—contained insect parts and insect fragments while held for sale.

DISPOSITION: 11-18-63. Consent—claimed by B. Heller & Co., Chicago, Ill. Segregated and reconditioned; approximately 1,067 lbs. destroyed.

29586. Thyme, black pepper, cassia, and ginger. (F.D.C. No. 47858. S. Nos. 34-587 R, 34-592 R, 34-596/7 R, 34-599 R.)

INFORMATION FILED: 12-6-62, S. Dist. N.Y., against Ware-Pack, Inc., New York, N.Y., and Albert Mauro, president and treasurer.

ALLEGED VIOLATIONS: Between 1-26-61 and 2-7-61, while quantities of thyme, black pepper, cassia, and ginger were being held for sale after shipment in interstate commerce, the defendants caused the articles to be held and stored under insanitary conditions, which acts resulted in the articles being adulterated.

CHARGE: 402(a)(3)—contained rodent urine and rodent excreta; and 402(a)(4)—held under insanitary conditions.

PLEA: Guilty.

DISPOSITION: 2-13-63. Corporation—\$1,250 fine which was remitted; individual—imprisonment for 6 months suspended, \$1,250 fine, and probation for 6 months.

29587. Ranch sauce, chile and tomato sauce, and pickled serrano pepper. (F.D.C. No. 49656. S. Nos. 79-998/9 X, 80-000 X.)

QUANTITY: 75 cases, each containing 24 jars of ranch sauce; 17 cases, each containing 24 jars of chile and tomato sauce; and 80 cases, each containing 24 jars of pickled serrano pepper; at East Chicago, Ind.

SHIPPED: Between 10-11-63 and 11-20-63, from New Haven, Mich., by J. Jesus Gonzalez & Son.

LABEL IN PART: (Jar) "Aguila 12 fl. oz. [with a handwritten "8" over the "12"] * * * Ranch Sauce * * * Packed for V. F. Garza, * * * East Chicago, Ind."; "Aguila 12 fl. oz. Chile and Tomato Sauce (or "Serrano Pepper in Vinegar") * * * Packed for V. F. Garza * * * East Chicago, Ind."

LIBELED: 12-24-63, N. Dist. Ind.

CHARGE: 403(a)—when shipped, the label statement of the ranch sauce "12 fl. oz. [with a handwritten "8" over the "12"]" was false and misleading, since the statement was ambiguous and the article contained less than 12 fluid oz., and 403(i) (2)—the label of the ranch sauce failed to bear the common or usual name of each ingredient since it failed to reveal that the ingredient "carrots" was present and since "oil" is not the common or usual name of an ingredient; and 403(e) (2)—the jars of chile and tomato sauce and pickled serrano pepper failed to bear a label containing an accurate statement of the quantity of the contents.

DISPOSITION: 1-17-64. Consent—claimed by J. Jesus Gonzalez & Son, and relabeled.

29588. Lemon flavor. (F.D.C. No. 49553. S. No. 59-221 X.)

QUANTITY: 39 cases, each containing 24 btls., at National City, Calif.

SHIPPED: 6-18-63, from New York, N.Y., by Robbin Sales Co.

LABEL IN PART: (Btl.) "Derry's Lemon Flavor Contains: 80% Cotton Seed Oil 20% Oil of Lemon * * * Conforms to Federal Specifications * * * Derry Products, Inc. Brooklyn, N.Y."

RESULTS OF INVESTIGATION: Examination showed the article contained less than the declared amount of lemon oil, in an oil other than cottonseed oil.

LIBELED: 12-4-63, S. Dist. Calif.

CHARGE: 402(b) (1)—when shipped, a valuable constituent, namely, lemon oil, had been in whole or in part omitted or abstracted from the article; and 402(b) (2)—a substance other than lemon oil or cottonseed oil had been substituted in whole or in part for the article; and 403(a)—the labeling of the article contained the false and misleading statement, "Contains: 80% Cotton Seed Oil 20% Oil of Lemon," and the false and misleading representation that the article conformed to Federal specifications.

DISPOSITION: 12-30-63. Default—destruction.

29589. Vanilla concentrate. (F.D.C. No. 49911. S. No. 77-993 X.)

QUANTITY: 4 1-gal. btls., at Brooklyn, N.Y.

SHIPPED: 12-11-63, from Union City, N.J., by Reynaud, Ltd.

LABEL IN PART: (Btl.) "Reynaud, Ltd. Pure Vanilla 10-Fold Concentrate Contains: Extractive Matter of Vanilla Beans * * * For Manufacturing Use Only * * * Union City, New Jersey."

RESULTS OF INVESTIGATION: Examination showed the article to be a dark brown liquid with a vanilla-like odor containing added vanillin and little, if any, true vanilla extractives.

LIBELED: 3-17-64, E. Dist. N.Y.

CHARGE: 402(b) (1)—when shipped, the valuable constituent, vanilla extractives, had been in whole or in part omitted or abstracted from the article; 402(b) (2)—vanillin and flavorings other than true vanilla extractives, had been in whole or in part substituted for the article; 402(b) (4)—vanillin and

flavorings other than true vanilla extractives had been added to the article or mixed or packed therewith, so as to make it appear better or of greater value than it was; 403(a)—the label statement "Pure Vanilla 10-Fold Concentrate" was false and misleading since it was contrary to fact; 403(i) (2)—the article's label failed to bear the common or usual name of each ingredient; and 403(k)—the article contained an artificial flavoring and failed to bear a label stating that fact.

DISPOSITION: 5-15-64. Default—destruction.

29590. Assorted herbs. (F.D.C. No. 49781. S. Nos. 32-666 X, 32-671 X, 32-673 X, 32-677 X.)

QUANTITY: 1 54-lb. bag of goldenrod leaves and tops; 2 50-lb. bags of eyebright herb; 3 cases, each containing 24 2½-oz. pkgs. of angelica seed herb tea; and 21 cases, each containing 24 2½-oz. pkgs. of comfrey leaves.

SHIPPED: Between 12-14-61 and 9-25-63, from New York, N.Y.

LABELS IN PART: (Pkg.) "Seelect Brand Angelica Seed Herb Tea * * * Packed by Seelect Dietary Products, Inc. Los Angeles, California"; and (pkg.) "Seelect Brand Imported Comfrey Leaves * * * Herb Tea * * * Packed by Seelect Dietary Products, Inc. Los Angeles, California."

RESULTS OF INVESTIGATION: The angelica seed herb tea and comfrey leaves were repacked by Seelect Dietary Products, Los Angeles, Calif., after shipment as above.

LIBELED: 2-13-64, S. Dist. Calif.

CHARGE: 402(a) (3)—while held for sale, all of the articles contained insects and insect fragments; all of the articles, except the angelica seed herb tea, contained rodent hairs; the eyebright herb and the comfrey also contained feather fragments; and the angelica seed herb tea also contained insect excreta.

DISPOSITION: 3-5-64. Default—destruction.

VITAMIN, MINERAL, AND OTHER PRODUCTS OF SPECIAL DIETARY SIGNIFICANCE

29591. Dietary supplement tablets. (F.D.C. No. 45516. S. No. 55-487 R.)

QUANTITY: 1 drum of approximately 25,000 tablets, at Seattle, Wash.

SHIPPED: 11-30-60, from Berkeley, Calif., by Stayner Corp.

LABEL IN PART: (Drum) "Special Formula Tablets S.C. S-161 Each Tablet Contains: %MDR * * * Vitamin B₁ (Thiamine Mononitrate) 2.5 Mg. 250% * * * Copper (As Sulfate) 0.38 Mg. * * * Magnesium (As Sulfate) 2.5 mg. * * * Potassium (As Sulfate) 2.5 Mg. * * * Need in Human Nutrition Not Established. A Dietary Supplement. * * * Stayner Corporation, Berkeley 10, California."

RESULTS OF INVESTIGATION: Analysis showed that the article contained approximately 50 percent of the declared amount of vitamin B₁.

LIBELED: 3-10-61, W. Dist. Wash.

CHARGE: 403(a)—when shipped, the label statements "Copper * * * Magnesium * * * Potassium * * * Need in Human Nutrition Not Established" were false and misleading, since they were contrary to fact; 402(b) (1)—while held for sale, the valuable constituent, vitamin B₁, had been in part omitted or abstracted from the article; and 403(a)—while held for sale, the label statement

"Vitamin B₁ * * * 2.5 Mg." was false and misleading, as applied to an article which contained less than the declared amount of vitamin B₁.

DISPOSITION: 4-10-61. Default—destruction.

29592. SDA food supplement capsules. (F.D.C. No. 48268. S. No. 5-218 T.)

QUANTITY: 7 ctns., each containing 28 boxes containing 42 2-capsule envelopes each; and 1 ctn. containing 16 boxes containing 42 2-capsule envelopes; at Baltimore, Md., in possession of Nutrodynamics, Inc.

SHIPPED: 5-24-62 and 5-25-62, from Newark, N.J., by Ivers-Lee Co.

LABEL IN PART: (Envelope) "SDA Food Supplement for dietary type of reduction * * * Nutrodynamics, Inc. * * * Miami 37, Florida * * * a low caloric food supplement."

RESULTS OF INVESTIGATION: The article was packaged in a highly reflective, gold-colored foil envelope on which the manufacturer's address was printed in small type in white ink and was difficult to read, and the statement of ingredients and dietary information was printed in small type in ink of a color which did not contrast adequately with the background.

LIBELED: 11-6-62, Dist. Md.

CHARGE: 403(e)(2)—when shipped and while held for sale, the article failed to bear a label containing an accurate statement of the quantity of the contents, since the quantity of contents was not stated on the label; 403(f)—the information required to appear on the label under 403(i)(2) and 403(j), namely, the statement of ingredients, and the special dietary information to inform purchasers of its value for such use, was not prominently placed thereon with such conspicuousness (as compared with other words and statements on the label) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

The libel alleged also that the article was misbranded under the provisions of the law applicable to drugs, as reported in notices of judgment on drugs and devices, No. 7771.

DISPOSITION: 4-10-63. Default—destruction.

29593. Multiple vitamin tablets. (F.D.C. No. 49341. S. No. 56-653 V.)

QUANTITY: 1,584 100-tablet btls., and 720 50-tablet btls., at Needham Heights, Mass.

SHIPPED: Between 10-23-61 and 11-16-61, from Long Island City, N.Y.

RESULTS OF INVESTIGATION: Analysis showed that the article contained less than 67 percent of the declared amount (3 mg. per tablet) of vitamin B₁.

LIBELED: 9-13-63, Dist. Mass.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent, namely, vitamin B₁, had been in part omitted or abstracted from the article; and 403(a)—the label statement "Each Tablet Supplies * * * Vitamin B₁ * * * 3 mg." was false and misleading as applied to a product containing less than the declared amount of vitamin B₁.

DISPOSITION: 11-14-63. Default—ordered destroyed, or delivered to a public or charitable institution with a statement that the article contained less than the declared amount of vitamin B₁.

29594. Multiple vitamin tablets. (F.D.C. No. 49502. S. No. 6-069 X.)

QUANTITY: 36 cases, each containing 36 100-tablet btls., at Providence, R.I.

SHIPPED: 9-7-62, from New York, N.Y.

RESULTS OF INVESTIGATION: Analysis showed that the article contained approximately 60 percent of the declared amount of thiamine mononitrate.

LIBELED: On or about 12-9-63, Dist. R.I.

CHARGE: 402(b)(1)—while held for sale, the valuable constituent of the article, thiamine mononitrate, had been in part omitted or abstracted; and 403(a)—the label statement "Each tablet provides * * * Thiamine Mononitrate (B₁) 3 mg." was false and misleading.

DISPOSITION: 6-22-64. Default—destruction.

29595. Pol-Ets tablets. (F.D.C. No. 49471. S. No. 49-985 X.)

QUANTITY: 18 cases, each containing 12 btls., at Bakersfield, Calif.

SHIPPED: 11-28-62, from Seattle, Wash., by Kirkman Laboratories, Inc.

LABEL IN PART: (Btl.) "Pol-Ets 100 Tablets Each Tablet Contains Pollen-240 Mg., Rose Hips-240 Mg. With Honey Added A Convenient means of including Natural organic pollen and rose hips in the diet * * * Special Dietary Supplement * * * Manufactured for Pollen Products Co. Bakersfield, Calif."

LIBELED: 10-21-63, S. Dist. Calif.

CHARGE: 403(a)—when shipped, the label contained false and misleading representations that the article was of significant value for special dietary supplementation by reason of its pollen content; and 403(j)—the article purported to be and was represented as a food for special dietary use, and its label failed to bear, as required by regulations, a statement of the dietary properties upon which such use was based in whole or in part.

DISPOSITION: 11-26-63. Consent—claimed by Pollen Products Co., Bakersfield, Calif., and destroyed.

MISCELLANEOUS FOODS

29596. Whitex Special Anti-oxidant. (F.D.C. No. 47845. S. Nos. 4-640 T, 10-226 T, 35-832/3 T.)

INFORMATION FILED: 9-17-62, E. Dist. Tenn., against The Bond Co., a corporation, Kingsport, Tenn., and James Mack Ray, Sr., president.

SHIPPED: Between 10-1-61 and 10-9-61, from Kingsport, Tenn., to Wilson, N. C., Horseheads, N. Y., and Williston, N. Dak.

LABEL IN PART: (Ctn.) "WHITEX SPECIAL ANTI-OXIDANT Net Weight Five Pounds The Bond Company * * * Kingsport, Tennessee [or "Tower Supply Co., Inc. * * * Rapid City, South Dakota"]."

RESULTS OF INVESTIGATION: Investigation showed that the article was intended for use as an anti-oxidant to prevent partially prepared restaurant potatoes from darkening during the holding period, and that the article was intended to contain a food additive that was generally recognized as safe instead of the sodium silicofluoride, which the article contained.

CHARGE: 402(a)(2)(C)—when shipped, the article consisted in part of a food additive, namely, sodium silicofluoride, which was unsafe within the meaning of 409, since it, its use, and intended use were not in conformity with a regulation or exemption.

PLEA: Guilty by the corporation; not guilty by the individual.

DISPOSITION: On 7-16-63, the individual defendant and the Government having stipulated the facts of the case, the court tried the individual defendant and found him not guilty. On 7-16-63, the court also fined the corporation \$500.

29597. Peach pie filling. (F.D.C. No. 48316. S. No. 11-485 T.)

QUANTITY: 50 cases, each containing 12 jars, at Pittsburgh, Pa.

SHIPPED: 8-15-62, from Newark, N.Y., by Comstock Foods, Inc.

LABEL IN PART: (Jar) "Comstock Peach Pie A Complete Filling * * * Net Weight 1-lb. 9-oz. * * * Comstock Foods, Inc., Newark, New York."

RESULTS OF INVESTIGATION: Examination showed that the article was short weight.

LIBELED: 10-15-62, W. Dist. Pa.

CHARGE: 403(e) (2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents.

DISPOSITION: 11-5-62. Default—delivered to a charitable institution.

29598. Heifer and steer implants. (F.D.C. No. 48212. S. Nos. 49-338/9 T.)

QUANTITY: 2 jars containing a total of 266 heifer implants, and 2 jars containing a total of 200 steer implants, at Oakdale, Calif.

SHIPPED: During the years 1957, 1958, 1959, 1960, and 1962, from Rio Piedras, P.R.

LABEL IN PART: (Jar) "250 Heifer Implants, 120 Day Caution: New drug limited by federal law to clinical investigational use only (animal) under the supervision of Dr. G. E. Taylor * * * Pan American Laboratories, Rio Piedras, Puerto Rico"; and "250 Steer Implants 120 Day Caution: New drug * * * Under supervision of Dr. Glenn E. Taylor, D.V.M."

RESULTS OF INVESTIGATION: The articles were shipped from Puerto Rico to a firm in Porterville, Calif., where the articles were relabeled and reshipped to Yosemite Veterinary Hospital & Supply, Modesto, Calif., who in turn relabeled the lots as described above and reshipped them to the dealer. Analysis showed that the articles consisted of hexestrol and androstanedione or hexestrol and testosterone.

LIBELED: 10-12-62, N. Dist. Calif.

CHARGE: 402(a) (2) (C)—while held for sale, the articles contained a food additive, namely, hexestrol and androstanedione or hexestrol and testosterone, which was unsafe within the meaning of 409 since it and its use or intended use were not in conformity with a regulation or exemption.

The articles were alleged also to be a new drug for which no application was effective, as reported in notices of judgment on drugs and devices, No. 7685.

DISPOSITION: 2-27-63. Default—destruction.

29599. Corn husks. (F.D.C. No. 49596. S. Nos. 58-529/30 X.)

QUANTITY: 152 15-lb. bales at San Fernando, Calif., and 29 15-lb. bales, at Los Angeles, Calif.

SHIPPED: 6-1-63, from El Paso, Tex.

LIBELED: 1-10-64, S. Dist. Calif.

CHARGE: 402(a) (3)—both lots contained insects, insect-damaged husks, rodent excreta pellets, pieces of skin with attached rodent hairs, and the 29-bale lot contained rodent urine, while held for sale.

DISPOSITION: 2-11-64. Default—destruction.

29600. Corn husks. (F.D.C. No. 49430. S. No. 27-069 X.)

QUANTITY: 36 40-lb. bales at Kansas City, Mo., in possession of La Flor De Mayo.

SHIPPED: 8-26-63, from San Antonio, Tex.

LIBELED: On or about 11-14-63, W. Dist. Mo.

CHARGE: 402(a)(3)—contained rodent urine, rodent excreta pellets, and rodent hairs; and 402(a)(4)—held under insanitary conditions.

DISPOSITION: 12-5-63. Default—destruction.

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navy, dried	29558, 29560	Fruits and vegetables	29554-29571
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terials	29501-29504	tomatoes and tomato products	
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Butter	¹ 29538, 29539	Garbanzo beans, dried	29562
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¹ (29505, 29538, 29596) Prosecution contested.

² (29554) Seizure contested; request for summary judgment.

	N.J. No.		N.J. No.
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Raisins	29509	nificance	29591-29595
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SDA food supplement capsules	29592	Whitex Special Anti-oxidant	¹ 29596
Self-rising flour	29515-29517	Wine	29504
Serrano pepper, pickled	29587	sherry	29504

SHIPPERS, MANUFACTURERS, AND DISTRIBUTORS

	N.J. No.		N.J. No.
A & P, Great, Tea Co.:		Bruno, L., & Sons Bakery:	
frozen perch fillets	29547	enriched bread	29506
American Bread Co.:		Central Grocers Cooperative,	
Spanish Bar cookies, flour, and		Inc.:	
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Associated Grocers, Inc.:		Central Wholesale Grocery Co.:	
rice	29526	self-rising flour	29515
Benham & Co., Inc.:		Chester Creamery Co.:	
dried lima beans	29563	butter	29539
Blue Sea Fish Co.:		Chicago Cold Storage Co.:	
frozen perch fillets	29546	frozen blueberries	29557
Bond Co.:		Comstock Foods, Inc.:	
Whitex Special Anti-oxidant	29596	peach pie filling	29597
Booth Fisheries Corp.:		Consolidated Marine, Inc.:	
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cheddar cheese	29540-29542	dried red beans and dried navy	
Bruno, L. J.:		beans	29560
enriched bread	29506		

¹ (29505, 29538, 29596) Prosecution contested.² (29554) Seizure contested; request for summary judgment.

	N.J. No.		N.J. No.
Derry Products, Inc.:		Grace and Salvatore (boat):	
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Dixie Peanut Co.:		Harvey, J. H., Co., Inc.:	
shelled peanuts-----	29572	self-rising flour and long grain	
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Co.:		Spanish Bar cookies, flour, and	
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Durham Peanut Co., Inc.:		Hoofts Bakery:	
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East Erie Packing Co.:		SDA food supplement cap-	
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Fallick Baking Co.:		English muffins-----	29507
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berts-----	29582	English muffins-----	29507
Fitzgerald, William, Milk Prod-		Kozloff, J., Fish Distributor,	
ucts Corp.:		Inc.:	
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Gorton's of Gloucester, Inc.:		Mabel Susan (boat):	
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¹ (29505, 29538, 29596) Prosecution contested.

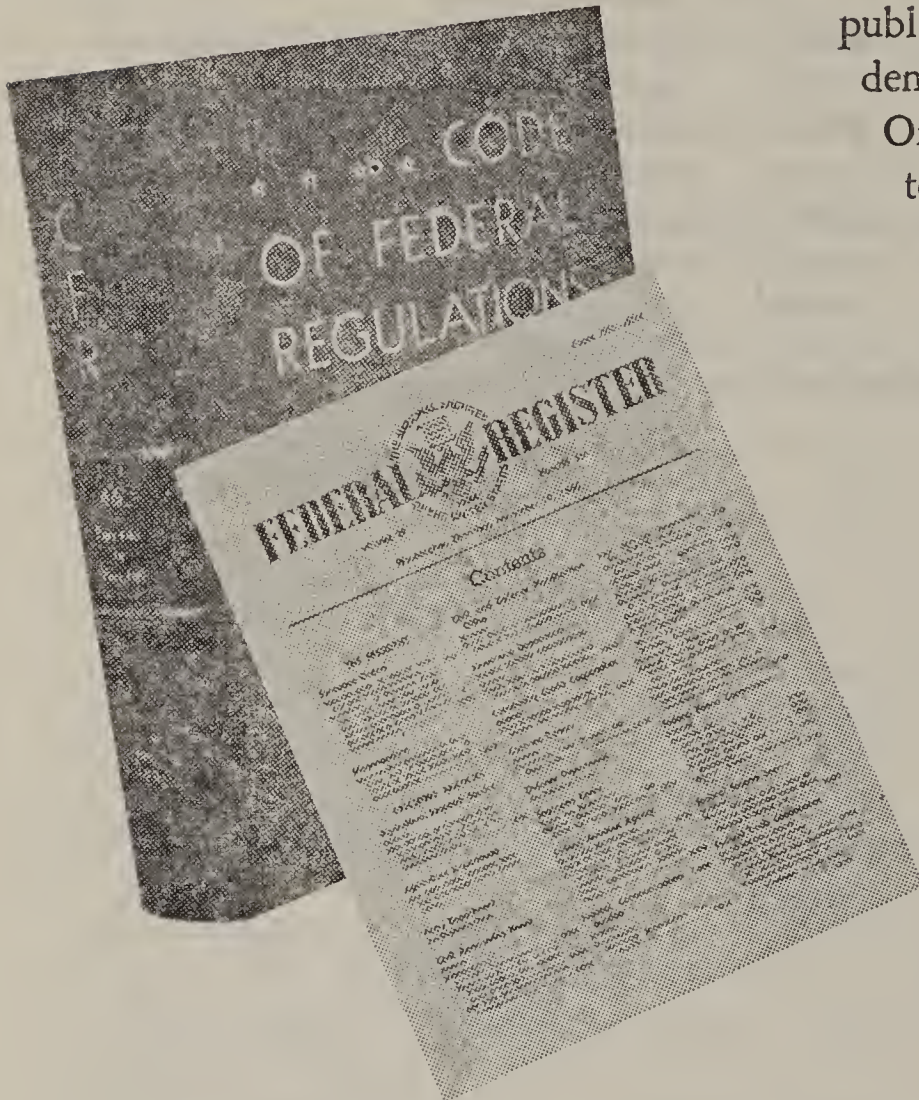
	N.J. No.		N.J. No.
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Northwestern Canning & Pack-		sherry wine and wine-----	29504
ing Co.:		Seaway Foods, Inc.:	
dried pigeon peas, dried black-		canned peaches-----	29555
eyed peas, and dried gar-		Seelect Dietary Products, Inc.:	
banzo beans-----	29562	assorted herbs-----	29590
Nottingham Canning Co., Inc:		Sexton, John, & Co.:	
canned mushrooms-----	29564	canned tomatoes-----	29567
Nutrodynamics, Inc.:		Snoboy, Inc.:	
SDA food supplement cap-		unshelled mixed nuts and fil-	
sules-----	29592	berts-----	29582
Pan American Laboratories:		Southern Shell Fish Co., Inc.:	
heifer and steer implants-----	29598	canned okra and tomatoes----	29565
Pan-Pacific Fisheries:		Southern States Canning Co.:	
canned tunafish-----	29548	canned peaches----- ²	29554
Pappas, T. J.:		Standard Wholesale Co., Inc.:	
canned tomatoes-----	29567	flour-----	29511
Pappas Bros. & Gillies Co., Inc.:		Stayner Corp.:	
canned tomatoes-----	29567	dietary supplement tablets----	29591
Pet Milk Co., Funsten Div.:		Stemper, C. N., Co.:	
shelled pecans-----	29579-29581	macaroni products, flour, and	
Pettigrew, R. L.:		rice-----	29519
Spanish Bar cookies, flour, and		Stokely-Van Camp Co., Inc.:	
raisins-----	29509	dried navy beans-----	29558
Pollen Products Co.:		Tack Kee Tea Co.:	
Pol-Ets tablets-----	29595	jasmine tea-----	29503
Potomac Creamery Co., Inc.:		Taylor, Dr. G. E.:	
butter----- ¹	29538	heifer and steer implants-----	29598
Ragland Bros. Co.:		Teslow, Inc.:	
self-rising flour-----	29516	wheat-----	29530
Ramos Shrimp Co.:		Thompson, Laurie:	
frozen flounder-----	29549	frozen walleyed fillets-----	29550

¹ (29505, 29538, 29596) Prosecution contested.² (29554) Seizure contested; request for summary judgment.

	N.J. No.		N.J. No.
Tower Supply Co., Inc.:		Ware-Pack, Inc.:	
Whitex Special Anti-oxidant-- ¹	29596	thyme, black pepper, cassia,	
Tremblay, Alfred:		and ginger-----	29586
frozen blueberries-----	29557	Winter, V. J.:	
Turnbull Cone Baking Co.:		enriched bread----- ¹	29505
Melba toast-----	29508	Wyatt Food Stores:	
Volkart Bros., Inc.:		unpopped popcorn-----	29536
green coffee beans-----	29501		

¹ (29505, 29538, 29596) Prosecution contested.

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